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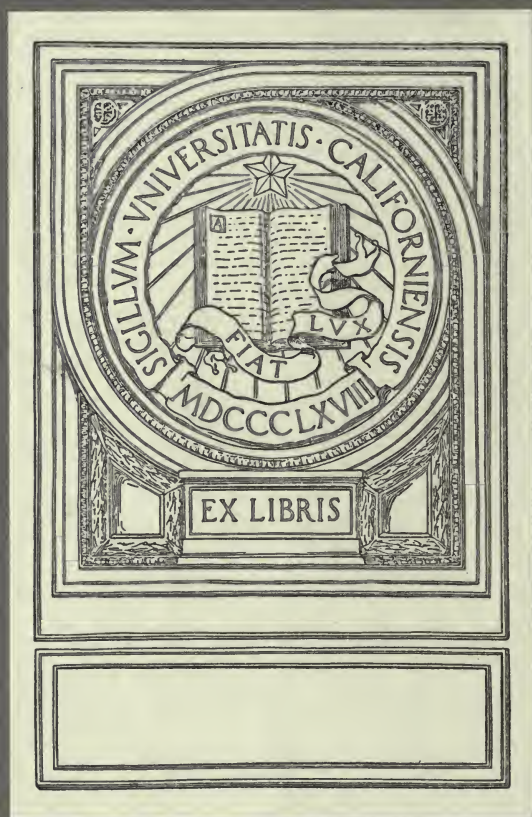


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GENERAL AND PRIMARY
ELECTION LAWS
OF THE
STATE OF IDAHO
1922



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GENERAL AND PRIMARY
ELECTION LAWS

OF THE
STATE OF IDAHO. *Laws*
1922 *Statutes, etc.*



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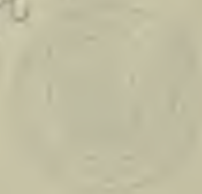
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MEMORANDUM

IMPORTANT DATES

Terms of Legislators begin December 1, following the election. (Section 76, Compiled Statutes).

Terms of State officials begin on the first Monday of January succeeding their election. This date for the year 1923 is January 1. (Section 73, Compiled Statutes).

Legislative sessions convene on the first Monday after the first day of January succeeding the election. The date the 1923 session will convene is January 8, 1923. (Article 3, Section 8, Constitution).

The following are the convention and the election dates for the year 1922:

The Primary Election will be held on the first Tuesday of August; that is, August 1, 1922. (Section 518, Compiled Statutes).

The County Conventions will be held on the third Tuesday of August; that is, August 15, 1922.

The State Central Committee will organize on the fourth Tuesday of August; that is, August 22, 1922. (Section 521, Compiled Statutes).

The State Conventions will convene on the fourth Tuesday of August; that is, August 22, 1922. (Section 524, Compiled Statutes).

The General Election will be held on the Tuesday succeeding the first Monday of November; that is, November 7, 1922. (Section 491, Compiled Statutes).

State Board of Canvassers meets August 16, 1922, to canvass vote for District Judges. (Section 537).

CHAPTER I.

CONSTITUTIONAL PROVISIONS.

The constitution was adopted by a constitutional convention held at Boise, in the Territory of Idaho, August 6, 1889, ratified by the people November 5, 1889, and approved by congress July 3, 1890. (26 Stat. L. 215.)

ARTICLE I.

SEC. 19. *Right of Suffrage Guaranteed.* No power, civil or military, shall at any time interfere with or prevent the free and lawful exercise of the right of suffrage.

Contrued: This section has reference to the attendance of officers, civil or military, at the polls, and prohibits them from interfering with the free and lawful exercise of the right of suffrage. Adams v. Lansdon (1910) 18 I. 483, 110 P. 280.

SEC. 20. *No Property Qualification Required of Electors.* No property qualification shall ever be required for any person to vote or hold office except in school elections or elections creating indebtedness.

Municipal Bond Elections: This section authorizes the imposition, in a municipal charter, of a property qualification on the right to vote on a proposition for the incurrence of an indebtedness. Wiggin v. Lewiston (1902) 8 I. 527, 69 P. 286.

Irrigation District Elections: An act fixing a property qualification for voters at irrigation district elections other than elections creating indebtedness is in violation of this section. Pioneer Irr. Dist. vs. Walker (1911) 20 I. 605, 119 P. 304; Bissett v. Pioneer Irr. Dist. (1912) 21 I. 98, 120 P. 461.

Drainage District Elections: An act making the ownership of real estate within the limits of a drainage district the only qualification for voters is in violation of the constitution. Ferbrache v. Drainage Dist. (1912) 23 I. 85, 128 P. 553; 44 L. R. A. (N. S.) 538, Ann. Cas. 1915C, 43.

ARTICLE III.

SEC. 19. *Local and Special Laws Prohibited.* The Legislature shall not pass local or special laws in any of the following enumerated cases, that is to say:

Providing for and conducting elections, or designating the place of voting.

Regulation of Elections: The local option law ('09, p. 9) does not violate this section. Vesting election registrars with discretionary power to fix days, for special election, in addition to those fixed by

general statute for receiving applications for registration not a local or special law. *Gillesby v. Comrs. of Canyon Co.* (1910) 17 I. 586, 598, 107 P. 71.

ARTICLE VI.

SEC. 1. *Secret Ballot Guaranteed.* All elections by the people must be by ballot. An absolutely secret ballot is hereby guaranteed, and it shall be the duty of the Legislature to enact such laws as shall carry this section into effect.

Numbering Ballots: Under the provisions of Sec. 1, Art. 6, of the State Constitution, it would not be within the power of the Legislature to authorize and direct the numbering of ballots to be used in an election.

McGrane v. Nez Perce Co., 18 I. 714, 112 P. 312, 32 L. R. A. (N. S.) 730.

There is no separate or distinct qualification provided by the constitution for voters at elections held in counties, cities, villages or other municipalities. To all such elections, Secs. 1 and 2 of Art. 6 apply.

Pioneer Irr. Dist. v. Walker, 20 I. 605, 612; 119 P. 304.

SEC. 2. *Qualifications of Electors.* Except as in this article otherwise provided, every male or female citizen of the United States, twenty-one years old, who has actually resided in this state or territory for six months, and in the county, where he or she offers to vote, thirty days next preceding the day of election, if registered as provided by law, is a qualified elector; and until otherwise provided by the Legislature, women who have the qualifications prescribed in this article may continue to hold such school offices and vote at such school elections as provided by the laws of Idaho Territory.

Cited: *Powell vs. Spackman*, 7 I. 693; 65 P. 503. *Knight v. Trigg*, 16 I. 256; 100 P. 1060.

Registration: Section 2, Art. 6 of the constitution of this state commits the subject of registration of voters entirely to the Legislature, and fully authorizes the Legislature to enact such registration law as it deems wise; provided, of course, such law in no way contravenes any constitutional right of the elector.

Gillesby v. Board, 17 I. 586; 107 P. 71.

Registration: Irregularities: A strict literal compliance with registration law will not be required in the absence of fraud or intentional wrongdoing. *Huffaker v. Edgington* (1917) 30 I. 179; 163 P. 793.

Registration Unnecessary: Registration is not a substantive qualification of an elector in this state. Registration is intended only as a regulation of the exercise of the right of suffrage and not as a qualification for such right. The terms "elector" and "qualified elector" are used interchangeably, and an elector is a qualified elector (*Quarles, J.*, dissents.)

Wilson vs. Bartlett, 7 I. 271; 62 P. 416.

There is no constitutional requirement that registration must be had for elections in special municipal corporations created by legislative enactment such as irrigation districts, drainage districts and good road districts and such registration is entirely left to the Legislature. Shoshone Highway Dist. v. Anderson (1912) 22 I. 109, 126; 125 P. 219.

Bond Elections: This section only prescribes the qualifications of a voter at a general election, and is not infringed by a provision of a municipal charter imposing a property qualification on the right to vote on the question of incurring a municipal indebtedness.

Wiggin v. Lewiston, 8 I. 527; 69 P. 286.

Disqualifications: No disqualification to hold office on account of sex which may exist under this section, can be raised in a proceeding, instituted after the wrongful removal of the officer, to compel her to deliver the papers of the office to her alleged successor.

Village of Kendrick v. Nelson, 13 I. 244; 89 P. 755.

SEC. 3. *Disqualification of Certain Persons.* No person is permitted to vote, serve as a juror, or hold any civil office who is under guardianship, idiotic or insane, or who has, at any place, been convicted of treason, felony, embezzlement of the public funds, bartering or selling, or offering to barter or sell his vote, or purchasing or offering to purchase the vote of another, or other infamous crime, and who has not been restored to the rights of citizenship, or who at the time of such election is confined in prison on conviction of a criminal offense, or who is a bigamist or polygamist, or is living in what is known as patriarchal, plural or celestial marriage, or in violation of any law of this State, or of the United States, forbidding any such crime; or who in any manner teaches, advises, counsels, aids or encourages any person to enter into bigamy, polygamy, or such patriarchal, plural, or celestial marriage, or to live in violation of any such law, or to commit any such crime; or who is a member of, or contributes to the support, aid, or encouragement of any order, organization, association, corporation or society, which teaches, advises, counsels, encourages or aids any person to enter into bigamy, polygamy or such patriarchal, plural or celestial marriage, or which teaches or advises that the laws of this State prescribing rules of civil conduct, are not the supreme law of the State; nor shall Chinese or persons of Mongolian descent not born in the United States, nor Indians not taxed, who have not severed their tribal relations and adopted the habits of civilization, either vote, serve as jurors, or hold any civil office.

Cited: Powell v. Spackman, 7 I. 693; 65 P. 503. Adams v. Lansdon, 18 I. 483; 110 P. 280. Griffith v. Owens, 30 I. 647; 166 P. 922.

Requirement of Test Oath: This section is not violated by an act of February 25, 1891, prescribing a test oath containing conditions of suffrage additional to those prescribed by this section.

Shepherd v. Grimmer, 3 I. 403; 31 P. 793.

SEC. 4. *Legislature May Prescribe Additional Qualifications.* The Legislature may prescribe qualifications, limitations and conditions for the right of suffrage, additional to those prescribed in this article, but shall never annul any of the provisions in this article contained.

Cited: Powell v. Spackman (1901) 7 I. 693; 65 P. 503; 54 L. R. A. 378; Toncray v. Budge (1908) 14 I. 621; 95 P. 26; Pioneer Irr. Dist. v. Walker (1911) 20 I. 605; 119 P. 304; Ferbrache v. Drainage Dist. (1912) 23 I. 35; 128 P. 553; 44 L. R. A. (N. S.) 538; Ann. Cas. 1915C 43; Griffith v. Owens (1917) 30 I. 647; 166 P. 922.

Requirement of Test Oath: This section authorizes the Legislature to prescribe a test oath as a condition of suffrage, embracing clauses additional to those contained in Sec. 3 of this Art. Shepherd v. Grimmer (1892) 3 I. 408; 31 P. 793.

Property Qualifications: This section is sufficiently broad to empower the Legislature to prescribe property qualifications on the right to vote in elections to create an indebtedness. Wiggin v. Lewiston (1902) 8 I. 527; 69 P. 286.

First and Second Choice: Under our constitution the Legislature has the right to prescribe the "limitations and conditions" under which the right of suffrage may be exercised, and it was within the legislative discretion and power to say to every citizen that he shall under certain circumstances, if he votes at all, indicate both a first and second choice for an officer. Adams v. Lansdon (1910) 18 I. 483; 110 P. 280.

SEC. 5. *Residence for Voting Purposes Not Lost or Gained.* For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of this State, or of the United States, nor while engaged in the navigation of the waters of this State or of the United States, nor while a student of any institution of learning, nor while kept at any almshouse or other asylum at the public expense.

Inmates of Soldiers' Home: Under the provisions of this section, inmates of the Soldiers' Home cannot acquire, by reason of their presence in such Soldiers' Home, and while kept at public expense, the right to vote in the county and precinct in which such institution is located. (Sullivan, J., dissents.)

Powell v. Spackman, 7 I. 693; 65 P. 503.

SEC. 6. *Recall of Officers Authorized.* Every public officer in the State of Idaho, excepting the Judicial officers, is subject to recall by the legal voters of the State or of the electoral district from which he is elected. The Legislature

shall pass the necessary laws to carry this provision into effect.

Adopted November 5, 1912. See Laws 1911, p. 790; Laws 1913, p. 677.

ARTICLE XVIII.

SEC. 2. *Removal of County Seats.* No county seat shall be removed unless upon petition of a majority of the qualified electors of the county, and unless two-thirds of the qualified electors of the county, voting on the proposition at a general election, shall vote in favor of such removal. A proposition of removal of the county seat shall not be submitted in the same county more than once in six years, except as provided by existing laws. No person shall vote at any county seat election, who has not resided in the county six months, and in the precinct ninety days.

Cited: (Con. op.) P. v. George (1891) 3 I. 72; 26 P. 938; (Con. op.) Green v. S. Bd. of Canvassers (1896) 5 I. 130; 47 P. 259. McDonald v. Doust (1905) 11 I. 14; 81 P. 60; Lippincott v. Carpenter (1912) 22 I. 675; 127 P. 557.

Application: The limitations imposed by this section on the removal of a county seat, apply only to the removal of a county seat which has been permanently fixed, and do not prohibit the Legislature from temporarily locating the seat of a new county, and further providing, in the act of creating the county, for an election on the question of permanent location of the county seat. Doan v. Board of Comrs. (1891) 3 I. 38; 26 P. 167.

This section does not apply to the location of a permanent county seat upon the organization of a new county, but does apply to the removal of a county seat. Leach v. Nez Perce (1913) 24 I. 322; 133 P. 926.

Signers of Petition: The framers of the constitution did not intend to prescribe a rule by which a majority of the qualified electors, contemplated by this section as signers of a petition for the removal of a county seat, should be ascertained, but left that the rule to be established by the Legislature, as was done in '99, p. 41, Sec. 6, providing for county seat elections, and by which the qualified electors who sign the petition need not be registered voters. (Quarles, J., dissents.) Wilson v. Bartlett (1900) 7 I. 271; 62 P. 416.

SEC. 3. *Division of Counties.* No county shall be divided unless a majority of the qualified electors of the territory proposed to be cut off, voting on the proposition at a general election, shall vote in favor of such division: *Provided*, That this section shall not apply to the creation of new counties. No person shall vote at such election who has not been ninety days a resident of the territory proposed to be annexed. When any part of a county is stricken off and attached to

another county, the part stricken off shall be held to pay its ratable proportion of all then existing liabilities of the county from which it is taken.

Cited: Sabin v. Curtis (1893) 3 I. 662; 32 P. 1130. McDonald v. Doust (1905) 11 I. 14; 81 P. 60. Blake v. Jacks (1910) 18 I. 70; 108 P. 534; 139 A. S. R. 177; 27 L. R. A. (N. S.) 1147. Leach v. Nez Perce (1913) 24 I. 322; 133 P. 926, (Erroneously for VIII, 3, in syllabus). Ind. H. Dist. No. 2 v. Ada Co. (1913) 24 I. 416; 134 P. 542.

Division of Territory: This section prohibits cutting off territory from one county and annexing it to another without submitting the proposition to popular vote, under the guise of an act purporting to create two new counties from the territory previously belonging to two existing counties, and so changing the boundary line between them as to give one of the counties a strip of territory which previously belonged to the other. The act of March 3, 1891, purporting to create and organize the counties of Alta and Lincoln was held on this ground to be unconstitutional. (Sullivan, C. J., dissents.) P. ex rel. Lincoln Co. v. George (1891) 3 I. 72; 26 P. 983.

Creation of New Counties: This section and the following one expressly authorize the creation of new counties, and in the creation of such a county, the Legislature may make any provision necessary to the complete organization of that county not specifically prohibited by the constitution, and may provide for the apportionment of the debt of the original county and for transcribing the records. Bannock Co. v. Bunting (1894) 4 I. 156; 37 P. 277.

Liability of Detached Territory: This section continues the liability of territory, detached from one county and annexed to another, for its ratable proportion of the debts of the mother county, and prohibits the Legislature from imposing such indebtedness on the county to which the detached territory is annexed. (Sullivan, J., dissents.) Shoshone Co. v. Profitt (1906) 11 I. 763; 84 P. 712.

ARTICLE XX.

AMENDMENTS.

SEC. 1. *How Amendments May Be Proposed.* Any amendment or amendments to this constitution may be proposed in either branch of the Legislature, and if the same shall be agreed to by two-thirds of all the members of each of the two houses, voting separately, such proposed amendment or amendments shall, with the yeas and nays thereon, be entered on their journals, and it shall be the duty of the Legislature to submit such amendment or amendments to the electors of the state at the next general election, and cause the same to be published without delay for at least six consecutive weeks, prior to said election, in not less than one newspaper of general circulation published in each county;

and if a majority of the electors shall ratify the same, such amendment or amendments shall become a part of this constitution.

Cited: Holmberg v. Jones (1901) 7 I. 752; 65 P. 563. Lansdon v. S. Bd. of Canvassers (1910) 18 I. 596; 111 P. 133. Bloomquist v. Comrs. of Bannock Co. (1913) 25 I. 284; 137 P. 174.

Proposal of Amendments: An amendment to the constitution may be proposed by joint resolution and need not be presented to the people by a formal statute. Hays v. Hays (1897) 5 I. 154; 47 P. 732.

The provisions in this section with reference to entering the proposed amendment or amendments, together with the ye and nay vote thereon, upon the journal, are mandatory. McBee v. Brady (1909) 15 I. 761; 100 P. 97.

Form of Amendments: While the constitution prescribes no particular method or form for proposing and submitting amendments to the constitution, the better course to pursue is to indicate in the resolution proposing the amendment the particular matter to be inserted or omitted as an amendment, and the particular place in the section the amendment is to be inserted. McBee v. Brady (1909) 15 I. 761; 100 P. 97.

The constitutional provisions for amending statutes (III, 18) do not apply to constitutional amendments. *Ib.*

The Legislature has no power to incorporate in a joint resolution proposing amendments to the constitution, any matter except the amendment proposed and the question and manner of submitting the same. *Ib.*

Where a section of the constitution is amended at the same time by two different amendments, and the amendments adopted are directly in conflict, and it is impossible to determine which should stand as a part of the constitution, or to reconcile the same, they both must fail. *Ib.*

Adoption of Amendments: Where a majority of electors voting upon the question of amendment of the constitution, vote in favor of the amendment, the amendment is ratified, although the votes thus cast are not a majority of the votes cast at the general election for state officers. Green v. S. Bd. of Canvassers (1896) 5 I. 130; 47 P. 259.

Canvass of Returns: Where the state board of canvassers canvass the votes on a proposed amendment to the constitution and declare that a majority of the votes were cast in favor of the amendment, stating the number for and against it, it is not necessary that the board should further declare, in terms, as to whether the amendment was carried. Hays v. Hays (1897) 5 I. 154; 47 P. 732.

Time of Taking Effect: Upon the ratification of an amendment it becomes a part of the constitution, and while the Legislature might propose an amendment which in itself provides for the time it would become operative, yet unless such time is incorporated in the amendment itself, the Legislature has no authority to fix a time different from that prescribed by the constitution. McBee v. Brady (1909) 15 I. 761; 100 P. 97.

Validity of Amendments: In determining the validity or constitutionality of a constitutional amendment, the court will not concern

itself with the justice or wisdom of the amendment, and will presume that the Legislature acted regularly in submitting the same to the voters of the state, and will uphold and sustain such amendment unless it appears that the same has not been proposed, submitted and adopted in accordance with the provisions of the constitution. *McBee v. Brady* (1909) 15 I. 761; 100 P. 97.

A question submitted as a constitutional amendment does not become a constitutional amendment unless submitted and adopted in accordance with the provisions of the constitution. *Utter v. Moseley* (1909) 16 I. 274; 100 P. 1058; 133 A. S. R. 94; 18 Ann Cas. 723.

SEC. 2. *Submission of Several Amendments.* If two or more amendments are proposed, they shall be submitted in such manner that the electors shall vote for or against each of them separately.

Cited: *Green v. S. Bd. of Canvassers* (1896) 5 I. 130; 47 P. 259.

Mandatory: This provision is mandatory. *McBee v. Brady* (1909) 15 I. 761; 100 P. 97.

Separate Amendments: All changes which relate to one subject and accomplish a single purpose, shall be treated, recognized and submitted as a single amendment. Under this provision of the constitution the Legislature can not incorporate into a single amendment several distinct and independent subjects and submit the same as a single amendment. The determination of the question as to whether a proposed change or changes in the constitution constitutes one or more amendments, depends upon whether the change as proposed relates to one subject and accomplishes a single purpose. If it does not, then there are as many amendments as there are independent subjects, and it matters not whether the proposed change affects one or many sections or articles of the constitution. *McBee v. Brady* (1909) 15 I. 761; 100 P. 97.

SEC. 3. *Revision or Amendment by Convention.* Whenever two-thirds of the members elected to each branch of the Legislature shall deem it necessary to call a convention to revise or amend this constitution, they shall recommend to the electors to vote at the next general election for or against a convention, and if a majority of all the electors voting at said election shall have voted for a convention, the Legislature shall at the next session provide by law for calling the same; and such convention shall consist of a number of members not less than double the number of the most numerous branch of the Legislature.

Cited: *Green v. S. Bd. of Canvassers* (1896) 5 I. 130; 47 P. 259. *Holmberg v. Jones* (1901) 7 I. 752; 65 P. 563. *McBee v. Brady* (1909) 15 I. 761; 100 P. 97. *Blomquist v. Comrs. of Bannock Co.* (1913) 25 I. 284; 137 P. 174.

SEC. 4. *Submission of Revised Constitution to People.* Any constitution adopted by such convention, shall have no

validity until it has been submitted to, and adopted by, the people.

Cited: Green v. S. Bd. of Canvassers (1896) 5 I. 130; 47 P. 259. Holmberg v. Jones (1901) 7 I. 762; 65 P. 563. McBee v. Brady (1909) 15 I. 761; 100 P. 97.

CHAPTER II.

COMPILED STATUTES OF IDAHO, TITLE IV., ELECTIONS CHAPTER 25.

GENERAL PROVISIONS.

SEC. 488. *Application of Title.* The provisions hereinafter enacted shall regulate and govern all elections hereafter held in the State of Idaho for election of all officers provided for by the constitution and the laws of the State of Idaho, at either general or special elections, except school district elections, and such other elections as are in these codes elsewhere specially provided for,

Cited: Hertle v. Ball, 9 I. 193; 72 P. 953. Cunningham v. George, 3 I. 456; 31 P. 809. Sabin v. Curtis, 3 I. 662; 32 P. 1130. Shoshone Highway Dist. v. Anderson, 22 I. 109; 125 P. 219.

District Elections: Registration is not required for highway district and other similar elections. Shoshone Highway dist. v. Anderson (1912) 22 I. 109; 125 P. 219.

SEC. 489. *Distribution of Copies of Law.* It shall be the duty of the Secretary of State to cause to be published in pamphlet form and distributed, through the county auditors of the respective counties, a sufficient number of copies of this law, and of such other laws as bear upon the subject of elections, as will place a copy thereof in the hands of all officers of elections.

SEC. 490. *Privilege from Arrest.* Electors are privileged from arrest except for treason, felony, or breach of the peace, during their attendance on election.

CHAPTER III.

COMPILED STATUTES, CH. 26.

TIME FOR HOLDING ELECTIONS.

SEC. 491. *Time for Holding Elections.* A general election shall be held in the several precincts in this state on the Tuesday succeeding the first Monday of November, A. D.

1920, and on the Tuesday succeeding the first Monday of November every alternate year thereafter.

Hist. C. L. Sec. 347.

Definition: The "general election" is the election at which all state officers are elected; whether an election is general or special is determined, not by the date on which it is held nor the authority which designates such date, but by the character of the election. *Doan v. Comrs. of Logan Co.* (1891) 3 I. 38; 26 P. 167. The words "general election" as generally used in constitutions and statutes have reference to general elections held for the purpose of electing state and county officers. *Kessler v. Fritchman* (1911) 21 I. 30; 119 P. 692; *Ann. Cas.* 1912C 1002; see also *dis. op.* 21 I. 58.

SEC. 492. *Officers to Be Elected: County Officers.* At the general election, A. D. 1922, and every fourth year thereafter, there shall be elected in every county of the state, a clerk of the district court, who is ex-officio auditor and recorder, and at the general election, A. D. 1920, and every alternate year thereafter, there shall be elected in every county in the state, the following officers, to-wit: Three county commissioners; a sheriff; county treasurer, who is ex-officio public administrator, and also ex-officio tax collector; probate judge; county superintendent of public instruction; a prosecuting attorney; a county assessor; one coroner and one surveyor.

Hist. C. L. Sec. 348, modified by Const. XVIII, 6, as am. 13, p. 677.

Cited: *Castle v. Bannock Co.* (1901) 8 I. 124; 67 P. 35. (*dis. op.*) *Kessler v. Fritchman* (1911) 21 I. 30, 58; 119 P. 692; *Ann. Cas.* 1912C 1002.

Vote for Commissioners: While commissioners are elected one from each district, the voters of the whole county should cast their votes for each of the commissioners and all the votes so cast should be counted in determining who is elected to the board. *Cunningham v. George* (1892) 3 I. 456; 31 P. 809.

SEC. 493. *Same: State Officers.* At the general election A. D. 1920, and every alternate year thereafter, there shall be elected the following state officers, to-wit: One governor; one lieutenant governor; one secretary of state; one state treasurer; one state auditor; one superintendent of public instruction; one attorney general; and one inspector of mines; and in each representative and senatorial district of the state such representatives and senators as they may severally be entitled to.

Hist. C. L. Sec. 349.

Cited: (*dis. op.*) *Kessler v. Fritchman* (1911) 21 I. 30; 119 P. 692; *Ann. Cas.* 1912C 1002.

SEC. 494. *United States Senators and Members of Congress.* At the general election, A. D. 1920, and every six years thereafter and at the general election, A. D. 1924, and every six years thereafter, there shall be elected a United States senator.

At the general election, A. D. 1920, and every alternate year thereafter, there shall be elected in each congressional district, a representative in congress and any additional number of representatives in congress to which the state may be entitled in the state at large.

Hist. Compiled as to senators from '13, c. 114, p. 433; as to representatives from the latter part of C. L. Sec. 349, as modified by '17, c. 121, p. 408.

SEC. 495. *Same: Judges.* At the general election, A. D. 1920, and every alternate year thereafter, there shall be elected one justice of the supreme court.

At the general election, A. D. 1922, and every fourth year thereafter, there shall be elected district judges in the several judicial districts as follows:

In the first, second, sixth, ninth, and tenth districts, one district judge.

In the third, fourth, fifth, seventh, and eighth districts, two district judges.

Hist. Compiled from C. L. Sec. 350.

Cited: (dis. op.) Kessler v. Fritchman (1911) 21 I. 30; 119 P. 692; Ann. Cas. 1912C 1002. Joy v. Gifford (1912) 22 I. 301; 125 P. 181.

SEC. 496. *Same: Presidential Electors.* At the general election, A. D. 1920, and every fourth year thereafter, there shall be elected such a number of electors of president and vice president of the United States as the state may be entitled to in the electoral college.

Hist. C. L. Sec. 351.

Cited: (dist. op.) Kessler v. Fritchman (1911) 21 I. 30; 119 P. 692; Ann. Cas. 1912C 1002. S. vs. Gifford (1912) 22 I. 613; 126 P. 1060.

SEC. 497. *Precinct Officers.* At the general election A. D. 1920, and every alternate year thereafter, there shall be elected in each justice's precinct, except wards in incorporated cities, two justices of the peace and one constable, and all other officers, not herein specified, that now are, or here-

after may be, created shall, unless otherwise provided, be elected on the day of the general election. Hist C. L. 352.

Cited: Kessler v. Fritchman (dis. op.) 21 I. 30; 119 P. 692. S. v. Vineyard, 9 I. 134; 72 P. 824.

Justices in Cities: This section has no application to the formation of justices' precincts and the provision for the election of two justices in all precincts "except wards in incorporated cities," does not constitute such wards justices' precincts, nor prohibit the county commissioners from establishing precincts within such cities. Johnston v. Savidge, 11 I. 204; 81 P. 616.

Johnston v. Savidge, 11 I. 204; 81 P. 616.

CHAPTER IV.

COMPILED STATUTES, CH. 27.

NOTICE OF ELECTION.

SEC. 498. *Election Proclamation.* At least forty days before each general election, and whenever he orders a special election, the Governor must issue an election proclamation under his hand and the great seal of the State of Idaho, and transmit copies thereof to the board of commissioners of the counties in which such elections are to be held.

Hist. C. L. 353.

Cited: Kessler v. Fritchman, (dis. op.) 21 I. 30; 119 P. 692. Budge v. Gifford (1914) 26 I. 521, 527; 144 P. 333.

SEC. 499. *Notices of Election.* The clerks of the several boards of county commissioners must, at least twenty days before any general election, make out and transmit by registered mail to a judge of election of each election precinct, three notices to be, as nearly as circumstances will admit of, as follows:

"Notice is hereby given that on the Tuesday following the first Monday of November next, (or in case of a special election state the date thereof), at the (here designate polling

place) in the county of....., an election will be held for members of Congress, State, county, district and precinct officers (naming the candidates and offices to be filled as the case may be) (or in the case of a special election the question to be voted on) which election shall be open at eight o'clock in the morning and will continue until seven

o'clock in the evening of the same day. Dated this _____
 day of _____, A. D. 19_____
 (as the case may be).

(Signed) _____

Clerk of the Board of County Commissioners."

Hist. C. L. 354; Laws 1913, p. 376.

SEC. 500. *Same: Posting Notices.* The judge of election aforesaid to whom such notices are transmitted as aforesaid, must cause to be posted, in three of the most public places of each election precinct, the notices referring to such election precinct, at least fifteen days previous to the time of holding any general election. Said notices shall be posted as follows: One at the house or place where the election is authorized to be held, and the other at two of the most public and suitable places in the precinct.

Hist. C. L. 355; Laws 1913, p. 377.

SEC. 501. *Advertisement of Special Questions.* Whenever a proposed Constitution or constitutional amendment, or other question, is to be submitted to the people of the State for popular vote, the Secretary of State shall duly, and not less than thirty days before election, certify the same to the auditor of each county in the State. Questions to be submitted to the people of a county or municipality shall be advertised in some newspaper of general circulation in the county or town to be affected at least twice, and twenty days before election.

Hist. C. L. 356.

Cross Reference: Publication of constitutional amendments, Constitution XX, 1.

CHAPTER V.

COMPILED STATUTES, CH. 28.

QUALIFICATIONS OF VOTERS.

SEC. 502. *Qualifications of Voters.* Every person over the age of twenty-one years, possessing the qualifications following, shall be entitled to vote at all elections: He shall be a citizen of the United States and shall have resided in this State six months immediately preceding the election at which he offers to vote, and in the county thirty days: *Pro-*

vided, That no person shall be permitted to vote at any county seat election who has not resided in the county six months, and in the precinct ninety days, where he offers to vote; nor shall any person be permitted to vote at any election for the division of the county, or striking off from any county any part thereof, who has not the qualifications provided for in Section 3, Article 18, of the Constitution; nor shall any person be denied the right to vote at any school district election, nor to hold any school district office on account of sex.

Hist. C. L. 357.

Cross Reference: Qualifications of electors: Const. VI, 2 Legislature may prescribe qualifications additional to those prescribed by the constitution: Const. VI, 4.

Application: The provisions of Sec. 357 of the R. C. (Sec. 502 C. S.) refer to the removal of a county seat from its permanent location, and not to the permanent location of a county seat where the Legislature has temporarily fixed the county seat of a new county, and left it with the electors to select the permanent county seat. *Leach v. Village of Nez Perce*, 24 I. 322; 133 P. 926.

SEC. 503. *Disqualifications.* No person is permitted to vote who is under guardianship, idiotic or insane, or who has at any place been convicted of treason, felony, embezzlement of public funds, bartering or selling, or offering to barter or sell, his vote, or purchasing, or offering to purchase, the vote of another, or other infamous crime, and who has not been restored to the right of citizenship, or who, at the time of such election, is confined in prison on conviction of a criminal offense.

Hist. C. L. 358.

Cross Reference: Similar provision with additional clauses disfranchising polygamists. Const. VI, 3.

Test Oath: Constitutionality: A territorial statute withholding the elective franchise from polygamists or members of any organization which teaches or encourages polygamy, and prescribing a test oath is not repugnant to the federal constitution. *Wooley v. Watkins*, 2 I. 590; 22 P. 102.

SEC. 504. *Soldiers, Sailors, Students and Inmates of Asylums.* For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of this State or of the United States, nor while engaged in the navigation of the waters of this State, or of the United States, nor while a

student of any institution of learning, nor while kept at any almshouse or other asylum at the public expense.

Hist. C. L. 359.

Cross Reference: Similar provision: Const. VI, 5.

SEC. 505. *Prostitutes and Inmates of Houses of Ill-Fame.* No common prostitute, or person who keeps or maintains, or is interested in keeping or maintaining, or who resides in or is an inmate of, or frequents or habitually resorts to, any house of prostitution or of ill-fame, or any other house or place commonly used as a house of prostitution or of ill-fame, or as a house or place of resort of lewd persons for the purposes of prostitution or lewdness, or who, being male and female, do lewdly and lasciviously cohabit together, shall be permitted to register as a voter or to vote at any election in this State, and any such person who shall so register or vote, or offer or attempt to so register or vote, shall, on conviction thereof, be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

Hist: C. L. 360.

Indictable Misdemeanor: The penalty prescribed by this section is in excess of the jurisdiction of justices' and probate courts, and the only jurisdiction such courts have of the offense defined by this section is to hold a preliminary examination and commit the accused for trial by the district court. *State v. West*, 20 I. 387; 118 P. 773.

SEC. 506. *Same: Examination for Registration.* Whenever any person within any of the prohibited classes mentioned in the preceding section shall offer himself or herself for registration, it shall be the duty of the registration officer, in addition to offering to said person any elector's oath provided by law, to examine such person as to his or her qualifications under the preceding section, and if such person is not qualified by reason of being within the prohibited class, it shall be the duty of the registration officer to refuse to register such person, and the registration officer shall keep a brief memorandum in writing showing all such examinations and his determination thereon.

Hist. C. L. 361. Laws 1913, p. 377.

SEC. 507. *Same: Challenge of Proposed Voter.* If any person within any of the prohibited classes mentioned in

Section 505 shall be registered and shall offer to vote, he or she may be challenged for being within such prohibited class or classes, and thereupon such person shall be examined as to his or her qualifications under said section, and if the board of election is satisfied that such person is within any such prohibited class, his or her vote shall not be received.

Hist. C. L. 362.

SEC. 508. *Same: Penalty for False Statement.* If any person within any of the prohibited classes mentioned in Section 505 shall make any false answer to any such examination, either by such registration officer, or on such challenge before board of election, it shall be considered and held to be a separate and distinct offense from any offense mentioned in Section 505, and on conviction thereof such person shall in addition to any penalty incurred by any provision of said election, be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

Hist. C. L. 363. Laws 1913, p. 378.

CHAPTER VI.

COMPILED STATUTES, CH. 29.

ELECTION PRECINCTS, JUDGES AND CLERKS.

SEC. 509. *Establishment of Election Precincts.* The board of commissioners of each county must establish a convenient number of election precincts therein.

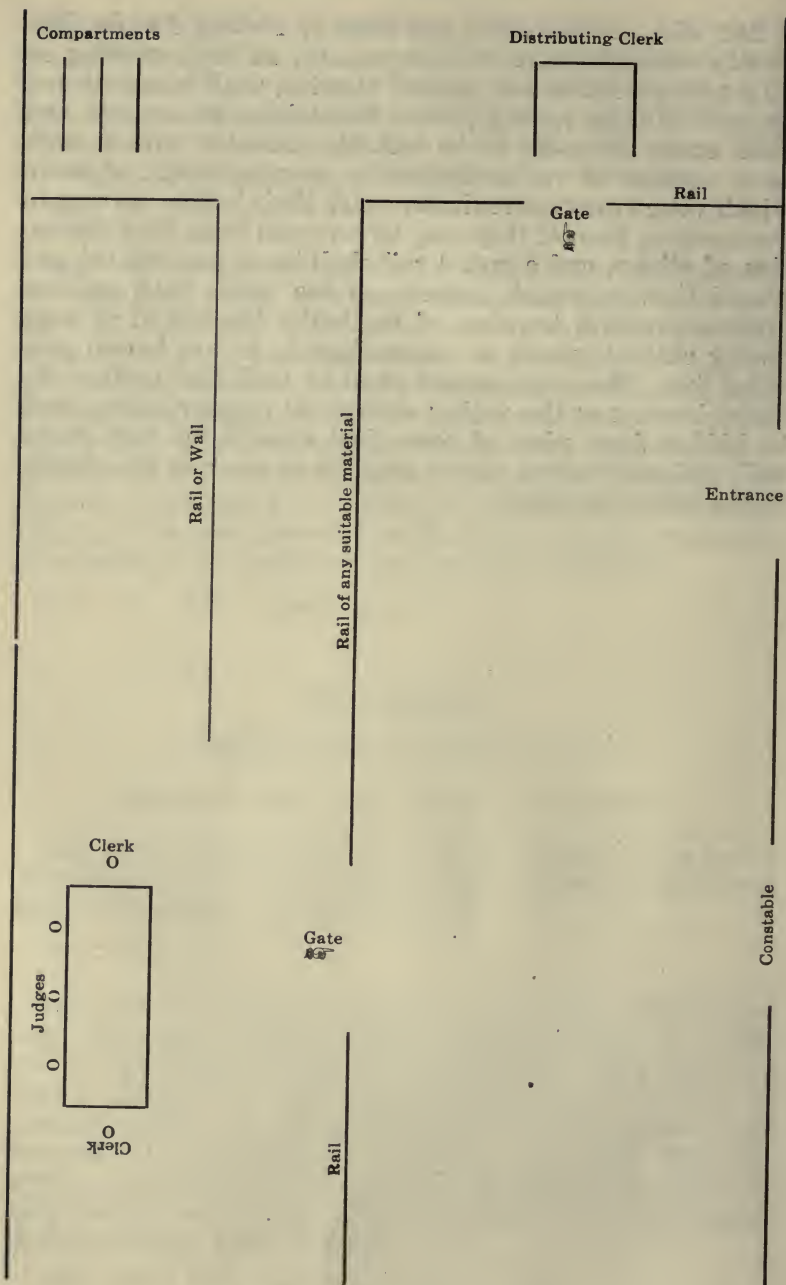
Hist. C. L. 364.

SEC. 510. *Changing Boundaries of Precincts.* The Board may, from time to time, change the boundaries of, create new or consolidate established precincts, but they must not alter or change any election precinct or change the place of holding election in any precinct after their regular July meeting next preceding any election: *Provided*, That the precinct established and the places designated in which to hold elections at the time of the taking effect of this chapter shall so remain until changed.

Hist. C. L. 365. Laws 1913, p. 359.

SEC. 511. *Designation and Plan of Polling Places.* The county commissioners of each county, at their meeting in July next preceding any general election, shall designate and appoint suitable polling places, throughout the county, and shall cause the same to be suitably provided with a sufficient number of voting shelves or compartments, at or in which voters may conveniently mark their ballots, so that in the marking thereof they may be screened from the observation of others, and a guard rail shall be so constructed and placed that only such persons as are inside said rail can approach within ten feet of the ballot boxes and of such voting shelves, places or compartments as are herein provided for. The arrangement shall be such that neither the ballot boxes nor the voting shelves or compartments shall be hidden from view of those just outside the said guard rail, and such polling places shall be as near as practicable in the following form:

ELECTION LAWS OF THE STATE OF IDAHO



The number of such voting shelves or compartments shall not be less than one for every fifty electors, or fraction thereof, registered in the precinct, and the expense of providing such polling places, compartments, guard rails, and all necessary supplies, shall be a public charge, and shall be provided for in the same manner as all other election expenses. Each voting shelf or compartment shall be kept provided with proper supplies and conveniences for marking the tickets. At their regular meeting in July next preceding any election, the board of county commissioners of each county shall, as far as necessary, alter or divide the election precincts in such manner that each election precinct shall not contain more than six hundred voters: *Provided*, That in precincts containing less than twenty-five registered voters the election may be conducted under the provisions of this title without the preparation of such booths or compartment as are required in this section.

In all municipal elections the duties specified in this section as devolving on the county commissioners, shall devolve on the officers in each city or town whose duty it is to designate and appoint polling places therein.

Hist. C. L. 366.

SEC. 512. *Appointment of Judges.* It is the duty of the county commissioners, at their regular session in July next preceding a general election to appoint three capable and discreet persons possessing the qualifications of electors, such persons to act as judges of election at each election precinct; and the clerk of the board must make out and deliver to the sheriff of the county, immediately after the appointment of such judges, a notice thereof, in writing, directed to the judges so appointed; and the sheriff, within ten days of the receipt of said notice, must serve the same upon each of the said judges of election by registered mail. If in any precinct any of said judges do not serve, the voters of said precinct may elect a judge or judges to fill the vacancy on the morning of the election, to serve at such election. The selection of officers must, as nearly as practicable, represent all the different political parties or principles represented by the nominees in each county. It shall be the duty of the judges to designate one of their number to act as distributing clerk.

All such judges of election shall hold office for two years,

unless sooner removed by the board of county commissioners, and shall act at all state and county elections.

Hist. C. L. 367. Laws 1913, p. 378, approved March 10, 1913.

SEC. 513. *Same: Vacancies Filled by Election.* If in any precinct any of said judges do not serve, the voters of said precinct may elect a judge or judges to fill the vacancy, on the morning of election, to serve at such election. The election of officers must, as nearly as practicable, represent all of the different political parties or principles represented by the nominees in each county.

Hist. C. L. 368. Laws 1913, p. 93.

SEC. 514. *Judges to Appoint Clerks.* The judges must choose two persons having similar qualifications with themselves to act as clerks of the election. The said judges shall be and continue judges of all elections of civil officers to be held at their respective wards or precincts until other judges are appointed and the said clerks of the election may continue to act as such during the pleasure of the judges of election. The county commissioners must from time to time fill all vacancies which may occur in the office of judges of election at any election precinct within their respective counties.

Hist. C. L. 369. Laws 1913, p. 93.

SEC. 515. *Compensation of Judges and Clerks.* It is the duty of the clerk of the board of commissioners of each county on the receipt of the returns of any general or special election, to make out his certificate, stating therein the compensation to which the judges and clerks of the election are entitled for their services, and lay the same before the county commissioners at their next session, and the board of commissioners must order the compensation paid out of the county treasury. The compensation of judges of election and clerks is four dollars per day, and of constables, on duty at polling places, three dollars per day.

Hist. C. L. 370.

CHAPTER VII.

COMPILED STATUTES, CH. 30.

PRIMARY ELECTIONS.

SEC. 516. *What Officers Affected.* Candidates of all political parties for United States Senator, Representative in Congress and Presidential electors and for elective state, district, county, precinct and *municipal officers* shall be nominated as hereinafter provided.

Hist. Laws '19, ch. 107, p. 372.

SEC. 517. *What is a Political Party.* A political party, within the meaning of this chapter, is an affiliation of electors, representing a political organization under a given name, which at the last preceding general election cast for any candidate on their ticket, within this State, ten per cent or more of the total vote cast for all candidates for such office within the State, and upon which ticket there were at least three nominees for state offices, or an affiliation of electors, equal in number to five per cent of the total number of votes cast at the preceding general election, who shall, at least thirty days before the date of the primary, file with the Secretary of State a written notice that they desire recognition as a political party, which said notice shall contain, first: The name of the proposed party. Second: That the subscribers thereto have affiliated one with another, for the purpose of forming such party, and third: That the subscribers to such notice intend to nominate at least three candidates for state offices whereupon such affiliation shall, under the party name chosen, have all the rights of a political party whose ticket shall have been on the ballot at the preceding general election.

Hist. Laws '19, ch. 107, p. 372.

SEC. 518. *Primary Election—When Held.* Primary elections shall be held on the *first* Tuesday of August, 1920, and biennially thereafter, for the nomination of candidates for the office of District Judge or Judges, and for county offices, the election of precinct committeemen, and the election of delegates to attend the County Convention, hereinafter provided for, and there represent their respective precincts. The person receiving the greatest number of votes or if the pre-

cinct is entitled to more than one delegate, then the persons receiving the greatest number of votes shall be by the judges of the precinct declared to be elected as delegates to the County Convention and such judges shall issue to him or them a certificate of election. For the purpose of this chapter, the offices of State Senators and Representatives in the State Legislature shall be considered county offices and nominated as other county officers.

The number of delegates to the County Convention to be determined as follows: The total of votes cast in each precinct at the last preceding election for candidates of that party for legislative and county offices shall be divided by the number of such candidates and the quotient shall be taken as the vote of said party in the precinct and each precinct shall be entitled to one delegate to the County Convention for each thirty votes or major part thereof, provided each precinct shall be entitled to at least one delegate.

Hist. Laws '19, ch. 21, p. 84.

SEC. 519. *County Central Committee.* The County Central Committee of each party shall be composed of one member elected from each voting precinct of the county by the electors of each party in such precinct, at said primary election; the person receiving the greatest number of votes shall be, by the precinct judges, declared elected, and such judges shall issue to him a certificate of election, which shall entitle him to a seat in said County Central Committee.

The persons so elected by each party shall separately meet at the County Seat at noon on the second Saturday following their election, and organize by electing a chairman, and a secretary, together with such other officers as they may deem necessary, and when duly organized shall have the usual powers vested in such committees, including the power to fill vacancies in the committee and upon their respective party tickets, and shall have power to select and name the primary election judges, clerks and other officials. In the counties formed by the Legislature where no county organization of the respective parties exist the county commissioners shall appoint the judges and officials for the respective parties for the primary election to be held in the year 1920, and provided further that the present state and county committees of the respective parties now in existence shall have all the authority, powers and duties of the com-

mittees herein provided for until the primary election of 1920.

Hist. Laws '19, ch. 107, p. 374.

SEC. 520. *County Convention.* County conventions of political parties composed of delegates chosen at the primary election shall be held in the several counties on the Third Tuesday of August following the primary election, at such place in each county and beginning at such hour as may be fixed by the respective county committees.

At the time and place so designated and fixed, or as soon thereafter as a majority of the duly accredited delegates appear, the convention shall organize and then select delegates to the state convention, also a member of the State Central Committee, and, if so determined by the convention, adopt a county platform. The chairman and secretary of the convention shall promptly certify to the county auditor of the county the names and postoffice addresses of the several precinct committeemen selected and to the Secretary of State the names and addresses of the delegates to the state convention.

Hist. Laws '19, ch. 107, p. 374.

SEC. 521. *State Central Committee.* The State Central Committee shall organize on the Fourth Tuesday of August following the primary election, on call of the chairman of the outgoing committee or the joint call of three members of the incoming committee, by choosing a chairman and a secretary, each of whom shall be an elector of the party within the state, but neither need be selected from among the members of the committee. Such meeting shall be held at the seat of the state government unless a different place is fixed with the consent of a majority of the members of the committee.

Hist. Laws '19, ch. 107, p. 375.

SEC. 522. *State Central Committee.* The State Central Committees of the respective political parties shall have power to make rules and regulations for their use and guidance, to fill vacancies in the committee and in their party tickets, to nominate candidates when necessary for special elections or call state conventions for that purpose, and perform all other acts and functions inherent in such organizations or arising from necessity and not inconsistent with the provisions of this Act, and the several county committees shall have and exercise the same powers concerning like

matters relating to their respective counties subject to the authority of the State Central Committee. The state committees shall also have power to call state conventions for the selection of delegates to the national conventions of their respective parties, determine the number of delegates to such state conventions to which each county is entitled and provide for the time and manner of choosing delegates, and shall have full authority to prescribe such rules and regulations as it deems necessary to determine the qualifications of such parties and who shall be entitled to vote at the primaries of such parties.

Hist. Laws '19, ch. 107, p. 375.

SEC. 523. *State Convention.* The state convention of a political party shall be composed of the delegates from the several counties, chosen as hereinbefore provided, the number thereof to be determined as follows: The total number of votes cast in each county at the last preceding general election for all candidates of that party for representative in Congress and the several state officers, shall be divided by the number of such candidates and the quotient shall be taken as the vote of said party in the county, which county shall be entitled to one delegate to the state convention for each four hundred or major part thereof of such vote; *Provided*, That each county shall be entitled to at least one delegate. It is the duty of the Secretary of State to determine in the manner herein set forth the number of delegates to which each political party is entitled from the several counties and to certify the same to the county auditors of the different counties not later than the first day of February of each year in which a general election is to be held.

Hist. Laws '19, ch. 107, p. 375.

SEC. 524. *State Convention...* A state convention of each political party shall be held on the fourth Tuesday of August following the primary election, at such place and within the state and beginning at such hour as the State Central Committee of the party may determine. At the time and place so designated and determined, or as soon thereafter as a majority of the duly accredited delegates appear, the convention shall organize and proceed to the adoption of a platform and the nomination of candidates for representatives in congress and for such elective state officers as are to be filled at the next general election, and, also, when such

offices are to be filled at such election, candidates for presidential electors and for United States Senator. In the nomination of candidates, the following order shall be followed:

(1) Presidential Electors; (2) United States Senator; (3) Representative in Congress; (4) Governor; (5) Lieutenant Governor; (6) Justice of the Supreme Court; (7) The remaining state officers in the order named in the Constitution or in the laws creating them. *Provided*, That in the nomination of Representatives in Congress only the delegates representing the counties within the territorial limits of the respective congressional districts shall be entitled to vote for the Representatives to be nominated from such district.

Hist. Laws '19, ch. 107, p. 376.

SEC. 525. General Provisions of Election Laws Applicable.

The provisions of the general laws relative to the holding of elections, the furnishing of ballot boxes and supplies, the solicitation of voters at the polls, the manner of conducting elections, the officers and duties thereof at elections, the counting of ballots and making returns of the results, the canvassing of returns, and all other provisions relating to general elections, shall apply to primary elections in so far as they are applicable and consistent with the provisions of this Chapter, and the rules and regulations adopted or to be adopted by the State Central Committees of the respective parties, tending to the prevention of the voting at the respective party primaries of others than bona fide members of such parties. The intent of this chapter being to place the holding of primary elections for the nomination of candidates for office under the protection and regulation of general laws now in force as far as possible, adding thereto the special features herein provided:

Provided, That when at any primary election such irregularities or frauds on the part of the voters or of officers of election, or of any other persons, shall occur, resulting in the election of delegates who do not correctly represent the principles of the party to which they are accredited or which the convention to which they are elected is clearly satisfied would not have been elected had the primary been fairly and honestly conducted, the convention must deny any delegate so fraudulently elected a seat in the convention, said convention to be the sole judge of the conduct of said primary.

Hist. Laws '19, ch. 107, p. 376.

SEC. 526. *Tally Sheets.* Two sets of tally sheets for each political party having candidates to be voted for at the primary election shall be furnished with the other supplies, and shall be practically as follows:

Each tally sheet, or the first page of each tally book shall be headed: "Tally sheet for..... (Name of Political Party)..... (Name of County)..... (Name of Election Precinct)..... (Date)."

The names of the candidates shall be placed on the tally sheets in the order in which they appear on the sample ballots, and in each case shall have the proper party designation at the top thereof; in other particulars said tally sheets shall be of similar form to those used at the general election. The county auditor shall also furnish to each political party holding a primary election in any precinct one copy of a check or poll list showing the registered voters of such precinct.

Hist. Laws '19, ch. 107, p. 377.

SEC. 527. *Primary Election Officials and Supplies.* The county central committee of each party holding such primary shall each designate three persons to act as judges and clerks of the primary election in each precinct. If any of such persons do not serve as judges then any of the judges present or the precinct committeemen of their party within the precinct shall select persons to fill the vacancies. The judges may appoint other electors of the precinct member of said party to assist them in their duties connected with the election, including the counting and canvassing of the ballots. Judges, clerks, and assistants at primary elections shall receive no compensation from the county or state for their services. It shall be the duty of the precinct committeemen of the respective parties holding such primaries to provide a separate polling place in each precinct and no part of the cost, if any, of securing such polling place shall be paid by any county of the state or be a proper charge against any county. All ballots and other election supplies for any precinct shall be delivered to a precinct committeeman of such precinct of each party holding such primary, whose duty it shall be to see that the same are at the proper polling place for use at the time for opening the polls.

Hist. Laws '19, ch. 107, p. 377.

SEC. 528. *Publication of Notice of Primary.* The county auditor of each county shall cause a notice of the primary election to be published at least once a week for two successive weeks in each newspaper published in the county representing each party holding a primary if there are such papers published in the county, and if not, then in any two papers published and having an extensive circulation therein; *Provided*, That publication in a single paper shall be deemed sufficient in any county where but one paper is published; and shall cause a copy of such notice to be posted conspicuously in each precinct in the county at least ten days before the election. Such notice to be so published and posted shall contain the names and addresses of all persons for whom nomination papers have been filed and who are to be voted for in his county with the party designation and title of each officer, but not in ballot form, show the number and names of delegates of each political party the several precincts are entitled to select to the county convention, give the date of the primary election, and the hours during which the polls will be open. At the time of posting said notices the county auditor shall supply the precinct committeeman of each political party holding such primaries with three blank forms to be filled in by said committeeman so as to show the place in his precinct where the primary election will be held, and these notices must be conspicuously posted at three prominent places in his precinct, for not less than five days preceding the primary election.

Hist. Laws '19, ch. 107, p. 378.

SEC. 529. *Who Can Vote.* No person shall be entitled to vote at any primary election unless he is duly registered in the precinct wherein he offers to vote, and is a member of the political party holding the primary at which he attempts to vote.

Hist. Laws '19, ch. 107, p. 378.

SEC. 530. *Who Subject to Challenge.* A person offering to vote at any primary election shall be subject to challenge on any ground that would subject him to challenge at any general election and on the further ground that he is not a bona fide member of the political party holding the primary at which he offers to vote.

Hist. Laws '19, ch. 107, p. 378.

SEC. 531. *Who to Determine Right of Person to Vote.* Any judge at any primary election shall have authority to administer the oath or affirmation to any persons offering to vote or offering to testify for or against such person. If any person be challenged for being within any prohibited class thereupon such person shall be examined by the election judges and if the judges of election are satisfied that such person is within such prohibited class his or her vote shall not be received.

Hist. Laws '19, ch. 107, p. 379.

SEC. 532. *How to Vote.* Each voter shall upon receiving a ballot retire to one of the booths and without delay mark the ballot received by him and fold it so that its face shall be concealed. He shall thereafter deliver the ballot received by him to one of the judges of election and it shall be deposited by said judge in the ballot box for votes. In the event a voter shall soil or deface the ballot received by him he shall at once return it and obtain another and the election officer shall place the ballot so returned in the ballot box provided for waste ballots.

Hist. Laws '19, ch. 107, p. 379.

SEC. 533. *When Polls Open.* The polls in the several election precincts on the day any primary election is held shall be open from one o'clock in the afternoon until seven o'clock in the evening. There shall be no adjournment or intermission of the work of the judges until the polls are closed, the votes counted and canvassed and the result publicly announced.

Hist. Laws '19, ch. 107, p. 379.

SEC. 534. *Canvassing of the Votes.* The votes of such primary election shall be canvassed in the manner provided by the general election laws as nearly as practicable.

When the ballots are taken from the ballot boxes, they shall be placed in a pile and when the canvass is completed shall be securely fastened together. The judges shall count the ballots and shall carefully enter the number of votes for each candidate on the tally sheet provided therefor, and when the count is completed shall ascertain the total vote cast for each candidate and publicly announce the result. The judges shall also mark on a sample ballot the total vote received by each candidate, shall enter thereon the names

of the precincts, and shall immediately mail the same to the county auditor who shall keep it on file for public information and reference until after the official canvass by the county commissioners of the votes cast at the said election.

Hist. Laws '19, ch. 107, p. 379.

SEC. 535. *Ballots.* After all ballots have been canvassed they shall be locked in a ballot box and retained by the judges; and the returns showing the number of votes received by each candidate, together with all election supplies, shall immediately be secured sealed and forthwith sent to the clerk of the board of county commissioners.

Hist. Laws '19, ch. 107, p. 380.

SEC. 536. *Returns to be Canvassed by Board of County Commissioners.* As soon as all the returns are received and not later than the tenth day after a primary election, the board of county commissioners shall meet as a board of canvassers, and canvass and make abstracts of the votes for the respective candidates for the different offices, and shall certify to the county auditor the names of the persons nominated by the different parties for the respective offices to be voted for at the ensuing general election in such county and shall make abstracts of the votes for the office of District Judge or Judges of their district and shall certify to the Secretary of State the number of votes cast for all nominees for the office of District Judge or Judges.

Hist. Laws '19, ch. 107, p. 380.

SEC. 537. *Canvassing Votes for District Judges.* For the purpose of canvassing the result of the primary votes for the nomination of District Judges the state board of canvassers as provided for by the general laws shall meet in the office of the Secretary of State at 10 o'clock in the forenoon, fifteen days after such primary and shall canvass the votes for candidates for the office of District Judges and shall certify the respective party nominees of the respective districts to the Secretary of State not less than thirty-five days before the general election next ensuing.

Hist. Laws '19, ch. 107, p. 380.

SEC. 538. *Who Nominated.* The person of each party receiving the highest number of votes shall be the nominee for the specified office. In each precinct the persons up to the number to which the precinct is entitled as delegates

who receive the highest vote shall be the delegats from that precinct to the respective county conventions. In case of a tie, the same shall be decided by lot as provided in Section 539 hereof. At the time and place set for holding any county convention it shall be the duty of the county auditor to certify to the presiding officer of such convention the number of delegates to be elected from such county to the state convention of such party the names of the candidates for all offices nominated at the primary election, the offices for which no candidate was nominated by the primary, together with the names of all candidates for such offices and the total vote received by each.

Hist. Laws '19, ch. 107, p. 380.

SEC. 539. *Tie Vote.* Should two or more candidates of any political party receive the same number of votes for the same office, the tie shall be determined by lot by the candidates, or their representatives duly authorized, the same to be drawn in case of a county office under the supervision of the county auditor, and in case of a district or state office under the supervision of the Secretary of State.

Hist. Laws '19, ch. 107, p. 381.

SEC. 540. *Counties to Furnish Election Supplies....* The cost of all ballots, blanks and other supplies to be used at primary elections herein authorized, shall be paid out of the county treasury, as in the case of general elections.

Hist. Laws '19, ch. 107, p. 381.

SEC. 541. *Nominations by Petition.* Candidates for elective public offices may be nominated otherwise than as hereinbefore set forth, in the following maner: A certificate of nomination stating the office, the name of the candidate, his postoffice address, including, if for a municipal office, the street number, if any, and his business occupation, shall be signed by electors of the political division to which the office relates; the number of signers when the nomination is for United States Senator, Representative in Congress, Presidential elector or for a state office to be not less than three thousand, of which not more than twenty-five per cent shall be residents of a single county; for a district office not less than nine hundred; for a county office not less than three hundred; for a precinct office not less than thirty; for a municipal office relating to the entire municipality not

less than seventy-five, and for a division of the municipality not less than thirty. Each signer shall write, or have written, in connection with his signature his place of residence, including, if within a city or town, his street number, if any. The signatures need not be all on the same paper, but all papers so signed relating to the same candidates shall be taken together as constituting the certificates. The certificates of nominations for United States Senator, Representatives in Congress, or presidential elector and for state and district offices shall have appended thereto a certificate of the county auditor stating that all the signers residing within his county are registered voters and shall be filed in the office of the Secretary of State not later than the Fourth Tuesday of August. Certificates of nomination for county and precinct officers shall be filed with the County Auditor not later than the second Tuesday of August, and certificates of nominations for municipal officers shall be filed with the clerk of the municipality not more than thirty days and not less than ten days before the day of election. The time for filing certificates of nominations as herein set forth shall not apply to nominations to fill vacancies. No person shall sign any nomination as provided for in this section if he has voted or intends to vote at any primary held for the purpose of nominating candidates to be elected at the same election for which the nomination provided for in this section is made.

Hist. Laws '19, ch. 107, p. 381.

SEC. 542. *Nominees of State Conventions—Certified.* The persons nominated shall be the duly accredited candidates of their respective parties for the several offices and their names shall be printed in the proper party column, and under the appropriate heading on the official ballot for the ensuing general election. Within five days after the adjournment of a state convention there shall be filed with the Secretary of State a copy of the platform adopted thereat, certified to by the chairman and secretary of the convention, and a certificate signed by said officers, showing the names, postoffice addresses and business occupations of the candidates nominated.

Hist. Laws '19, ch. 107, p. 381.

SEC. 543. *Nomination Papers.* In order that the name of a person may be placed on the ticket of his party as a candidate for nomination for an office, candidates for which are

to be voted for at any primary election, a nomination paper must be signed by him and filed in the office of the County Recorder of the county not more than sixty days nor less than thirty days before the primary election. Such paper, when signed by him, shall be in substantially the following form, with the blanks thereof properly filled, to-wit:

STATE OF IDAHO, }
County of..... } ss.

I,....., do solemnly swear (or affirm) that I am a citizen of the United States of the age of twenty-one years or over, or will be at the ensuing election, and am a legally qualified voter of.....County; that I now reside at (insert street and number, if any) in this precinct and am a member and affiliated with the.....party; * * that I have not signed a petition for nomination of a candidate of a political party with which I am not affiliated, and that I have not signed the nomination papers of an independent candidate for any office, for which office candidates for nomination are voted for at this primary; that I believe in the * * * principles set forth by the.....party, and that I am not becoming a candidate as member of any partisan or nonpartisan organization other than as a candidate of the.....party; that I voted at the.....city, village or town, with the.....political party at the.....election held in.....A. D.

Subscribed and sworn to before me the.....election held in.....A. D.

In addition to such nomination paper, such candidate shall produce and file with the County Recorder at the same time as such nomination paper is filed a written certificate of the county chairman or a majority of the members of the county central committee, that he is then and has been for two years prior thereto a member of the political party on whose ticket he desires to become a candidate or the affidavits of at least five reputable members of the party from which said candidate seeks a nomination, who have resided in said county for more than two years immediately prior to signing such affidavit, stating that they

have known such nominee for more than two years last past and that said nominee is a member of the party from which he seeks a nomination. Such affidavits may be controverted by affidavits at any time within five days after the filing of such nomination paper by any other five reputable members of said party who have been residents of said county for at least two years immediately prior to signing such affidavit, and the issue thus made shall be heard summarily by any District Judge of the district of which such county is a part, and witnesses may be examined orally on both sides and documentary evidence may be introduced and the judge shall forthwith decide such issue and make findings and render judgment, which judgment may be summarily reviewed by the Supreme Court by writ of review or certiorari.

Hist. Laws '19, ch. 21, p. 85.

SEC. 544. *Nomination Papers—Where Filed.* All nomination papers herein required shall be filed as follows: For the office of Judge of any District Court in the office of the Secretary of State, and for county and precinct offices precinct committeeman and delegates to the county convention in the office of the County Recorder.

Hist. Laws '19, ch. 107, p. 383.

SEC. 545. *Secretary of State to Certify Names of Candidates for District Judges to Counties of the Respective Districts.* At least thirty days before any primary election, the Secretary of State shall transmit to each county auditor within the state a certified list containing the name, post office address and party designation of each person entitled to be voted for at such primary for the office of District Judge as appears from the nomination papers filed in the office of the Secretary of State.

Hist. Laws '19, ch. 107, p. 383.

SEC. 546. *Fees.* At the time of the filing of a nomination paper a fee shall be paid to the county auditor equal in amount to one per cent of the annual salary of the office for which the nomination is sought, which fee shall be turned into the county treasury. For filing a nomination paper for any legislative candidate the filing fee shall be two dollars.

Hist. Laws '19, ch. 107, p. 383.

SEC. 547. *Auditor to Prepare Ballots.* As soon as he shall have the necessary information and as soon as possible after the time has expired for the filing of nominations in his office, the county auditor of each county shall prepare forms of official ballots containing the ticket of each political party and arranging therein the names of the candidates for each office alphabetically according to the first letter of the surname of each candidate. The said ballots shall be prepared in substantially the form of sample ballots hereto attached. Across the top of each ballot shall be printed in plain type:

First: The words "Official Primary Election Ballot."
Second: The name of the party holding such primary.
Third: The party's emblem, if any it has. Fourth: The name of the county in which the ballots are to be used.
Fifth: "Instruction; To vote for a person make a cross (X) in the square at the right of his name. After marking the ballot, hand it to a judge of the election to be placed in the ballot box for votes."

Hist. Laws '19, ch. 107, p. 384.

SEC. 548. *Form of Primary Ballot.* Following the foregoing heading, the tickets shall be arranged on the official ballots for primary election in substantially the following form:

State Senator.

(Names)

State Representative.

(Names)

District Judges.

(Names)

County Commissioner.

First District

(Names)

County Commissioner.

Second District

(Names)

County Commissioner.

Third District

(Names)

Clerk District Court.

(Names)

Prosecuting Attorney.
(Names)

Sheriff.
(Names)

County Treasurer.
(Names)

Probate Judge.
(Names)

County Superintendent of Public Instruction.
(Names)

County Assessor.
(Names)

Coroner.
(Names)

Surveyor.
(Names)

Delegates to County Convention.
(Names)

Precinct Committeemen.
(Names)

.....(for primary held), (date)

Hist. Laws '19, ch. 107, p. 384.

SEC. 459. *Nominations by Petition.* No certificate of nomination made pursuant to the provisions of Section 541 of this Chapter shall contain the name of more than one candidate; no person shall join in nominating thereunder more than one person as a candidate for each office to be filled, and no person shall accept a nomination for more than one office. The names of all candidates so nominated shall appear under proper designation as to the offices for which they are proposed, in the same column of the official ballot with the word "Independent" and nothing more at the top thereof, and no party appellation, statement of principles or other matter shall appear in connection with such names or column except as here stated.

Hist. Laws '19, ch. 107, p. 386.

SEC. 550. *Certificates of Nomination to be Preserved.* The Secretary of State, the County Auditors of the several counties and the clerks of the several municipalities shall cause to be preserved, in their respective offices for one year, all certificates of nomination filed.

Hist. Laws '19, ch. 107, p. 386.

SEC. 551. *Secretary of State to Certify Who Nominated.* Not less than thirty days before an election the Secretary of State shall certify to the several county auditors the names, places of residence, and business occupations of all persons nominated to be voted for at the election as shown by certificates, the nomination papers filed in his office, with the necessary information relating to such nominations as will enable the county auditors to properly prepare the ballots. Certificates relating to nominations for district officers shall be sent only to the county auditors of the counties composing the respective districts.

Hist. Laws '19, ch. 107, p. 386.

SEC. 552. *County Auditors to Publish Names of Nominees.* As soon as the County Auditor has received the information required to be certified to him by the Secretary of State as provided in Section 551 of this Chapter, it shall be his duty to publish in the simplest and least expensive form the names of all candidates of all parties for state and county offices which will appear upon the official ballot at the general election, such publication to be made once a week for three consecutive weeks in the official county newspaper. As soon as the clerk of the municipality shall have received the certificate of nomination required to be filed with him it shall be his duty to publish in a similar manner the information contained in said certificates for one week in one newspaper of general circulation in such municipality.

Hist. Laws '19, ch. 107, p. 386.

SEC. 553. *Decline Nominations.* Whenever any person nominated for a public office shall in writing signed by him and by him acknowledged before a proper officer or attested by the signature of two competent witnesses, and filed in the office in which the certificates of this nomination was filed, state that he declines the nomination, such nomination shall thereafter be of no effect. In nominations relating to presi-

dential electors, congressional, state and district officers, declinations must be filed not less than twenty days before the election and in nominations relating to legislative, county, precinct and municipal officers such declinations must be filed not less than ten days before the election.

Hist. Laws '19, ch. 107, p. 387.

SEC. 554. *Fill Vacancies.* Before the ballots are printed for the election, if any person nominated at a primary election or by a convention of a political party or other political organization, die or decline the nomination as provided in Section 553 of this Chapter or becomes ineligible to hold the office for which he was nominated, or any such nomination be or become insufficient or inoperative from any cause, the vacancy thus occasioned may be filled in the manner herein-after specified, to-wit:

If the original nomination was made by a convention which delegated to a committee the power to fill vacancies such committee may, upon the happening of a vacancy, proceed to fill the same, and if no such power was delegated then the right to make nomination for presidential elector or for United States Senator or a congressional, state or district officer shall lie with the state committee of the party and for a county or precinct officer with the county committee. The chairman and secretary of the committee which makes the nomination shall thereupon make and file with the proper officer a certificate setting forth the fact and cause of the vacancy, the name of the person so nominated, the office for which the nomination is made, the name of the person for whom the new nominee is to be substituted, the fact as to the power of the committee to fill vacancies, and such further information as is required to be given in an original certificate of nomination. The certificate so made shall be executed in the manner prescribed for the original certificate of nomination, and filed in the same office, and have the same force and effect as such original.

When such certificate shall be filed with the Secretary of State he shall, in certifying the nomination to the county auditors insert the name of the person who has been thus nominated to fill a vacancy in place of that of the original nominee, and in the event he has already set forth his certificate, he shall forthwith certify to the county auditors the

name and other information relating to the person so nominated to fill the vacancy, the office he is nominated for, the party or organization he represents and the name of the person for whom such nominee is substituted. The state central committee or county committees may delegate such authority to any committee chosen from their number.

Hist. Laws '19, ch. 107, p. 387.

SEC. 555. *Vacancies After Ticket is Printed.* When a vacancy occurs after the ballots are printed, it may be filled in the manner provided in Section 554 of this Chapter, and if so filled the officer whose duty it is to have the tickets printed and distributed shall have prepared a requisite number of stickers with the name of the substitute candidate printed thereon, and send them by registered mail to the judges of election in the various precincts of the county. The judges of election shall affix such stickers at the proper place on the ballots before the ballots are delivered to the voters.

Hist. Laws '19, ch. 107, p. 388.

SEC. 556. *Personal Expenses.* No person shall, to aid or promote his nomination as a candidate for an office, either at a primary election or a convention, directly or indirectly, himself or through any other person or agency, give, pay, expend or contribute, or promise to give, pay, expend or contribute any money or other valuable thing or service, except for personal expenses. The words "personal expenses" as used in this Chapter shall mean and include only expenses directly incurred and paid by a candidate for his own traveling and purposes directly incidental thereto; for publishing, for writing, printing and preparing for transmission, letters, circulars and other publications relating to his candidacy and other public matters; for cards, stationery and postage, and for halls and other places for holding public meetings; *Provided*, That no candidate for nomination at any primary election or convention shall give, pay, expend, contribute or promise for personal expense, or at all, to aid or promote his nomination more than twenty-five per cent of the yearly salary or compensation of the office if he be a candidate for United States Senator, Representative in Congress, or any state or district office except Lieutenant Governor; nor more than ten per cent if he be a candidate

for a county office, except that he may expend not to exceed three hundred dollars if he be a candidate for the office of Lieutenant Governor and not to exceed one hundred dollars if he be a candidate for either branch of the Legislature or for county commissioner.

Hist. Laws '19, ch. 107, p. 388.

SEC. 557. *Filing of Itemized Accounts.* Every candidate for nomination for any office other than a precinct or a municipal office, at a primary election or convention, shall within twenty days after such election or convention file an itemized statement in writing, duly sworn to as to its being correct, setting forth each sum of money, thing of value or consideration whatever, given, paid, expended, contributed, or promised by him or any one for him with his knowledge or consent to secure influence or in any manner affect his nomination. Such statement shall set forth all sums paid as personal expenses and show fully and in detail the nature, kind and character of the purposes for which they were expended or promised and the person or persons to whom they were paid or promised. Statements relating to congressional, state and district offices shall be filed with the Secretary of State, and statements relating to county offices shall be filed with the County Auditor, and shall during office hours be opened to public inspection. No person whose name is not printed on the official ballot shall be considered a candidate at a primary election within the meaning of this section, unless he receives at least twenty per cent of the votes cast for the office, and no person shall be considered as having been a candidate at a convention unless with his consent, he received votes therein or was thereby given a nomination which he accepted.

Hist. Laws '19, ch. 107, p. 389.

SEC. 558. *Perjury.* Any person who knowingly swears falsely to any material statement or matter in a nomination paper or certificate or other paper relative to his qualifications as a voter upon registration or at a primary election or as to his party affiliations, or as to his personal expenses as herein defined, is guilty of perjury and upon conviction thereof shall be punished as provided in the Penal Code.

Hist. Laws '19, ch. 107, p. 389.

SEC. 559. *Signing Name of Another Person.* Any person who shall write the name of another as a signer or witness to a nomination paper or nomination certificate, except with his consent and in the presence of at least one witness, shall be guilty of forgery and upon conviction thereof shall be punished as provided in the Penal Code.

Hist. Laws '19, ch. 107, p. 389.

SEC. 560. Each delegate to a State Convention shall, upon his filing with the State Auditor a receipt for his railroad fare to and from his place of residence to such convention that certificate of the chairman or secretary of such convention that he attended the same and voted therein, be entitled to be reimbursed for the actual sum so expended by him. And the State Auditor is hereby authorized to draw his warrant upon the above conditions being fulfilled, in favor of each of said delegates, for the amount to which said delegate is as above provided, entitled, and the State Treasurer is hereby authorized to pay said warrants. There is hereby appropriated for such biennium, out of the general fund not otherwise appropriated, for the purposes herein provided for, the sum of Seventy-five Hundred Dollars (\$7500), or so much thereof as may be necessary.

Hist. Laws '19, ch. 107, p. 390.

CHAPTER VIII.

COMPILED STATUTES, CH. 31.

REGISTRATION OF ELECTORS.

SEC. 561. *Appointment of Registrars.* The board of county commissioners of each county of the state must, at its regular meeting in April, next preceding each general election, appoint a registrar for each election precinct in the county, who must be a qualified elector, resident of such precinct, and otherwise a proper person and qualified to perform the duties of such office, and such registrar may hold his office until his successor is appointed and qualified. When any registrar fails to act, or the office becomes vacant, the said board, if in session, must appoint another registrar; or if said board is not in session, the chairman of the board must appoint; and should a registrar not be appointed, or from any cause, none should act, the electors may, on the

second Saturday of May at one o'clock p. m. next preceding any general election to which this title is applicable, meet at the place in the precinct appointed by said board for the holding of such election, or should the board fail to appoint a place, then at the place where the last general election was held, and elect a registrar.

Hist. C. L. 393. Laws 1917, ch. 44, sec. 1, p. 96.

Liberal Construction: Statutes prescribing duties of election officers relative to registering voters should not be so construed as to make right of citizens to vote depend upon strict observance of law. *Huffaker v. Edgington* (1917) 30 I. 179; 163 P. 793.

SEC. 562. *Registration Notices, Books and Supplies.* The said board must, prior to the first day of May next preceding any general election, cause notice to be given for not less than fifteen days, by publication in some newspaper published in the county, if there be one, otherwise by at least three notices posted up in different parts of the county, one of which must be at the court house door, giving the names and general description of election precincts, the name of the registrar for each precinct, and the time during which registration may be made, which shall be, for every general election, during each Saturday including and from the first day of May, to and including the Saturday next preceding the primary election, when such registration books shall be closed until the Saturday following such primary election, when the same shall be reopened for registration of electors until nine o'clock p. m. on the Saturday next preceding the general election. At the time of or before giving such notice, the board must furnish to each registrar two books, one to be known as the "election registrar" for the registry of qualified electors, and the other for the registry of rejected applicants. Each of such books must be ruled and headed substantially as follows:

Number
Name of Elector
Dates of Registration or Dates of Rejection
Age
Where Born
Description of Residence
Certificate of Naturalization Exhibit—Yes or No
Remarks

At the same time the said board must furnish to the registrar the blank notices, certificates, oaths and all other blanks, books, and papers, needed and required to perform the duties of his or her office as such registrar.

Hist. C. L. 394. Laws 1917, ch. 44, sec. 2, p. 97.

Cited: Shoshone Highway Dist. v. Anderson (1912) 221 I. 109; 125 P. 219.

Powers of Registrar: Registrar may give notice of days other than certain Saturdays preceding special election, on which he will receive applications for registration. Gillesby v. Comrs. of Canyon Co. (1910) 17 I. 586; 107 P. 71; Ann. Cas. 1913B, 17, 23, 24 1916D 22. Nims v. Gilmore (1910) 17 I. 609; 107 P. 79.

SEC. 562. *Oath of Registrar.* Before entering upon the duties of his office, each registrar must take and subscribe, before any officer authorized to administer oaths, the official oath required of all officers acting under the laws of the State of Idaho, which, when so taken and subscribed, must be by him filed with the clerk of the board of county commissioners, and said registrar may thereupon register his own name in the elector's register.

Hist. C. L. 395. Laws 1917, ch. 44, sec. 3, p. 98.

SEC. 564. *Registration of Voters: Elector's Oath: Check Lists.* He must also, prior to the time of commencement of registration, post notices in at least three public places in different parts of his precinct, most likely to give notice to the inhabitants thereof, giving the time, days and hours during, and the place at which he will be ready to receive and hear applications for registration, and he must thereafter, on the days named by him in said notice, be at the place designated, from the hours of nine o'clock a. m. to five o'clock p. m., and from seven o'clock p. m. to nine o'clock p. m., and receive and register the names of all persons applying, who are, or will be on the day of election for which registration is made, entitled to vote thereat. He must, also, on any other day of the week except holidays, during said time of registration, register any such elector who may find and apply to him at his place of registration, and he may, at any time or place during said time of registration, register any such elector of his precinct. He may, at any time, examine under oath any applicant as to his qualifications, and he must examine and permit any qualified elector of his county to examine any applicant for registration, either when such applicant is not known to the registrar to be a qualified elector, or when any such qualified elector challenges such applicant and specifies his cause of challenge.

When any applicant claims to be a naturalized citizen the production by him of his certificate of naturalization is prima facie evidence of citizenship. If he cannot produce such certificate, he must state, under oath, positively, the time when, and place and court where, he was naturalized; and he must by his own, or other testimony, make it satisfactorily appear to such registrar that he has been duly naturalized and that his certificate thereof has been lost, destroyed or is beyond his control and thereupon he must be deemed a citizen, and entitled to registration if otherwise qualified. All examinations before such registrar must be reduced to writing, when desired by such applicant, challenging elector or registrar. Such examination for any one applicant shall not exceed one-half hour, without the consent of the registrar. If any applicant refuses to answer all questions, give all information under his control, take all other oaths, and do all other acts and things required of him by law, his application must be rejected by the registrar.

The registrar must, before he registers any applicant, require him to take and subscribe the oath to be known as the "Elector's Oath," which is as follows:

ELECTOR'S OATH.

I do swear (or affirm) that I am a citizen of the United States, of the age of twenty-one years, or will be the..... day of....., A. D. 19....., (naming the date of the next succeeding election); that I have (or will have) actually resided in this State for six months, and in this county for thirty days next preceding the next ensuing election (in case of any election requiring a different time of residence to make it); that I have never been convicted of treason, felony, embezzlement of public funds, bartering or selling or offering to barter or sell my vote, or purchasing or offering to purchase the vote of another, or other infamous crime, without thereafter being restored to the rights of citizenship; that I will not commit any act in violation of the provisions in this oath contained; that I am not now registered or entitled to vote at any other place in this State; that I do regard the Constitution of the United States and the laws thereof, and the Constitution of this State and the laws thereof, as interpreted by the Courts, as the supreme law of the land; (when made before a judge of election add: "and I have not previously voted at this election,") so help me God.

(Signed)

Subscribed and sworn to before me this..... day of..... A. D. 19.....
Registrar of..... Precinct.....
County, Idaho.

When the registrar admits any one to registration he must enter, in the proper column of the "Elector's Register," the number, the name in full (except any middle name, which may be by initial), date of registry, age, place of nativity and residence of the elector so admitted. The residence must be so described by giving the house, street, ward, or part of the precinct he resides in, that it may be easily found; also it shall be stated, if a naturalized citizen, whether or not he produced his certificate, and the registrar may, in the column of remarks, add any pertinent notes.

He must also enter the names, with statements similar to

the above, of all persons who are refused registration, in the books kept for that purpose, and therein state the reason of such refusal.

During the time between the last day of registration and the day of election each registrar must prepare for his "Elector's Register" two "check lists" of all the names registered by him, arranged alphabetically according to the surname, placing on the left of the names the same number it bears in the "Elector's Register," and on the right of the column of names, a blank column in which to indicate by the word "voted" when the electors votes; said "check lists" must have a heading showing for what election it was prepared and used; they must be carefully prepared without interlineations, in legible writing or typewriting, certified and sworn to by the registrar, and, not later than the day next preceding the election, he must deliver to one of the judges of election of his precinct his "Elector's Register," and the register containing the names of those refused registration, and to each of the other two judges, who are not of the same political party, a copy of said "check lists," and such judges must, as the electors vote, write the word "voted" opposite their names in said "check lists," while the clerks of election keep the record of the electors voting as elsewhere provided in this title.

Hist. C. L. 396. Laws 1917, ch. 44, sec. 4, p. 98.

Cited: Wilson v. Bartlett (1900) 7 I. 271; 62 P. 416.

The days on which registrars will hear applications for registration are left entirely to the discretion of the registrar. Gillesby v. Comrs. of Canyon Co. (1910) 17 I. 586; 107 P. 71; Ann. Cas. 1913B, 17, 23, 24, 1916D, 62. Nims v. Gilmore (1910) 17 I. 609; 107 P. 79.

Power to Administer Oath: This section confers upon the registrar the power to administer oaths. T. v. Anderson (1889) 2 I. 573; 21 P. 417; 24 A. S. R. 678.

SEC. 565. *Preservation of Registrar's Papers.* All persons offering to vote at any election are subject to challenge, as provided by the election laws, but registration of any elector's name is prima facie evidence of his right to vote, and no person shall vote unless he is first registered.

Each registrar, after so preparing his "check list," must arrange the "Elector's Oaths" taken before him in the order the names of the electors who took them appear upon the "check lists," and attach them together, putting the names under each letter in a separate package; and all such

oaths, certificates and written testimony taken by the registrar, and the registrar books of electors and persons rejected, delivered to said judges, must all be transmitted, and other election returns, to the clerk of the board of county commissioners, who must preserve the same for at least one year.

Hist. C. L. 397. Laws 1917, ch. 44, sec. 5, p. 101.

Cited: Wilson v. Bartlett (1900) 7 I. 271; 62 P. 416.

SEC. 566. *Registrar to Estimate Tickets Required.* Each registrar must, twenty-five days previous to the day of the primary election and twenty-five days prior to the general election, notify the clerk of the board of county commissioners of his county of the probable number of tickets required for the precinct of which he is registrar, basing his estimate upon the number of registered electors, allowing a sufficient number for contingencies at each election.

Hist. C. L. 398. Laws 1917, ch. 44, sec. 6, p. 101.

SEC. 567. *Transfer Certificates.* When a registered elector desires to remove his residence from a precinct where he is registered, he may, at any time before the registrar has closed his registration books, apply to such registrar to have his name stricken from the register, and the registrar must then strike the name of such elector from the register, and shall deliver to said elector a transfer certificate substantially in the following form, to-wit:

TRANSFER CERTIFICATE.

"This certifies that.....was on the
.....day of....., 19....., duly registered
in.....Precinct, in the County of.....
State of Idaho; and that at his own request his name has
been this day erased from the official register of said pre-
cinct.

"Witness my hand this.....day of.....,
19.....

"Registrar of.....Precinct,
County, Idaho."

Such transfer certificate shall entitle the elector named therein to be registered in any other precinct in the same county, if it be filed with the registrar of such other precinct at any time before the close of the last day of registration.

Any elector who has taken out a transfer certificate as in this section provided, may personally file the same with the registrar of the precinct in which he desires to register and vote, or he may send his transfer certificate to such registrar by registered mail. If the elector file his transfer certificate personally, he shall be treated as any other applicant for registration; if the elector send his transfer certificate by mail to the registrar, his name shall be entered in the official register and check lists; and on the check lists opposite the name of each elector who has filed a transfer certificate personally, the registrar shall enter the words, "Registered by certificate," and opposite the name of each elector who has sent his transfer certificate by mail the register shall enter, "Registered by certificate by mail," and the registry number appearing upon the envelope in which the transfer was sent to him. Upon the day of election, when an elector registered by transfer certificate by mail offers to vote, the judges of election, or one of them, shall, before receiving and depositing the ballot, administer to such elector the same oath that is required to be taken before registrars by all electors applying for registration, and shall require such elector to exhibit the original registered letter receipt issued to him when he mailed his transfer certificate to the registrar, and the number on the check list opposite the name of such elector must correspond with the number on the registered letter receipt.

Hist. C. L. 399. Laws 1917, ch. 44, sec. 7, p. 101.

SEC. 568. *Mandate to Compel Registration.* Should any registrar at any time refuse to register any applicant, such applicant may apply to the District Court, or the Judge thereof, for a writ of mandate to compel the registrar to register him and the provisions of the Code of Civil Procedure in similar proceedings are applicable.

Hist. C. L. 400. Laws 1917, ch. 44, sec. 8, p. 102.

SEC. 569. *Compensation of Registrar.* The several registrars shall receive such compensation as shall be allowed by the board of county commissioners, which in no case shall exceed twenty-five cents for each name registered, and the compensation herein provided for shall be paid out of the current expense fund.

Hist. C. L. 401. Laws 1917, ch. 44, sec. 9, p. 103.

CHAPTER XIV.

COMPILED STATUTES, CH. 32.

BALLOTS AND SUPPLIES

SEC. 570. *Official Election Stamp.* The board of county commissioners shall, at their regular meeting in July next preceding a regular election, make provision for an official election stamp (which must bear the date and year of the election at which it is used, and the words "official ballot,") of such character or device and of such material, as said board may select, and such official stamp must be changed at each general election and kept secret by the officers furnishing and using it, as provided by law, and no one else must know of its form or make until used according to law. It is also the duty of the county commissioners, at their regular session in July next preceding a general election, to authorize the county auditor to provide a suitable number of election tickets for the county, said tickets to be printed under the same regulations as other county printing. The tickets must be bound in book form, each book containing one hundred tickets and printed in the manner prescribed by law.

Hist. C. L. 402.

SEC. 571. *Ballot Boxes.* The county commissioners must provide, at the expense of the county, suitable ballot boxes, with lock and key, and an opening in the lid sufficient to admit a single folded ballot, and no larger, and similar boxes for the use of the distributing clerks, in which they shall deposit defaced, mutilated and returned ballots. The keys must be delivered to one of the judges designated by the board.

Hist. C. L. 403.

SEC. 572. *Official Ballots to be Provided.* Except as in this title otherwise provided, it shall be the duty of the county auditor of each county to provide printed ballots for every election for public officers in which electors, or any of the electors, within the county, participate, and cause to be printed in the ballot the name of every candidate whose name has been certified to or filed with the county auditor in the manner provided for in this title. Ballots, other than those printed by the respective county auditors accord-

ing to the provisions of this title, shall not be cast or counted in any election. Nothing in this title contained shall prevent any voter from writing on his ticket the name of any person for whom he desires to vote for an office, and such vote shall be counted the same as if printed upon the ballot and marked by the voter. The voter may place a cross (X) oposite the name he has written, but his having written the name of his choice is sufficient evidence that such is the person for whom he desires to vote. Elections for school district officers are excepted from the provisions of this section. In all municipal elections the duties specified in this section as devolving on the county auditor shall devolve on the municipal clerk.

Hist. C. L. 404.

Duties of Auditor: A county auditor in preparing official ballots acts ministerially only, and must place upon the ballot in the proper column the names of the candidates, whose nominations have been duly certified to him; he cannot reject the name of any nominee on the ground that he is ineligible to the office for which he is nominated. *Miller v. Davenport*, 8 I. 593; 70 P. 610. *Fuller vs. Corey* (1910) 18 I. 558; 110 P. 1035.

SEC. 573. All election ballots prepared under the provisions of this title for the election of candidates for office shall be white in color, and of good quality of printing paper, and the same shall be printed thereon in black ink.

Every ballot shall contain thereon the names of every candidate whose nomination for any office specified on the ballot has been certified or filed according to the provisions of this title, but no name shall appear thereon more than once.

The ballot shall be of sufficient size to contain the names of all the candidates and questions to be voted on, exclusive of the stub or counterfoil. The width of the stub or counterfoil shall be two inches, and of the same length as the ballot. Each stub shall be consecutively numbered, beginning with number one; the ballot and stub being connected by a perforated line. * * *

















The width of the ballot must be divided into equal perpendicular spaces, one for each political party represented by the different opposing candidates, in which the tickets of the different parties must be printed, and one similar in which only the names of the different offices to be filled at the election shall be printed, and below which the voter may write the names of the persons he wishes to vote for. These

perpendicular spaces, or party tickets, must each be surrounded by very heavy leaded lines, and between each space, or party ticket, there must be a blank space of one-half inch. At the top of each ticket must be printed the caption or name of the political party in a size of type not smaller than long primer. Immediately below the middle of such caption or name, must be printed a circle at least three-fourths of an inch in diameter, within which the voter may place a cross (X), and thereby he votes, and his vote must be counted for all the candidates named in that perpendicular space, or party ticket, except such as he shall erase by drawing lines through the names of those he does not wish to vote for. Immediately below the circle above named must be drawn a horizontal line, below which must be printed the names of the offices, to be printed in small capitals, and the names of the candidates therefor in not smaller than long primer capitals.

When a President and Vice President of the United States are to be elected, the name of the office and the names of the candidates for electors must be printed in like type as directed for other offices and candidates, immediately below the last named horizontal line. The name of each office and the candidate thereof must be included in one space, but separated from other offices and candidates by horizontal lines. To the right of names of the offices and candidates must be a light ruled perpendicular line, within which, and opposite the name of each candidate, must be printed a circle one-half inch in diameter, within which, if the voter places a cross (X) his vote must be counted for the candidate whose name is thus marked: Provided, That if he has placed a cross in the large circle at the head of the ticket, his cross opposite the name of the candidate in any other ticket must be counted for said candidate. The voter may, instead of placing a cross in the large circle, vote only for such candidates as he desires, by placing a cross on the right of their names in the small circle, or by writing in the blank ticket the names of the persons he desires to vote for, and placing a cross on the right of their names in the circle. Circles one-half inch in diameter must be placed in the blank perpendicular space on the ballot for the name of each candidate who may be therein voted for. All the names of the several like offices and the several opposing candidates therefor must be placed on the same horizontal straight line. On the

(Name of County, Date of Election.)
Perforated Line.

You can vote a ticket "straight" by placing an X in large circle on straight ticket you do not wish to vote for. See illustration on Representatives ticket.

REPUBLICAN TICKET		ONE-HALF INCH SPACE	DEMOCRATIC TICKET	
				
FOR CONGRESS JOHN JONES	 1-2 Inch		FOR CONGRESS ALEXANDER KNIGHT	 1-2 Inch
FOR GOVERNOR WILLIAM JONES			FOR GOVERNOR CONRAD DWIGHT	
FOR SECRETARY OF STATE HENRY BOND			FOR SECRETARY OF STATE RICHARD ROE	
FOR REPRESENTATIVES JOHN DOE			FOR REPRESENTATIVES GEORGE FOX	
GEORGE HOOD		ANDREW WILSON		
WILLIAM WIRT		JOHN ALSTON		
JOHN OSBORNE		ASA DALE		

name of party you wish to vote for. You can "scratch" your
 and placing an X in small circle on right of name you wish to

POPULIST TICKET



FOR CONGRESS

1-2 Inch

FOR GOVERNOR

FOR SECRETARY OF
STATE

FOR REPRESENTATIVES

ONE-HALF INCH SPACE

FOR CONGRESS

1-2 Inch

FOR GOVERNOR

FOR SECRETARY OF
STATE

FOR REPRESENTATIVES

*ballot, in aid of the voter, may be placed such words or explanations as "Vote for one," "Vote for three," "Yes," "No," and the like. The same margin must be left above and below the printed matter. * * **

When constitutional amendments or other questions are to be submitted to a vote of the people at any general election the question or questions to be voted on shall be printed immediately following the names of the candidates for county and precinct offices, and immediately preceding said questions on the ballot shall be printed a word or words indicating the nature of the questions to be voted on, as "constitutional amendments," and the following instructions to the voter: "To vote on the following, mark a cross (X) in the square at the right of yes or no." Immediately to the right of the questions to be voted on shall be printed the words: "Yes and No" in letters not less than three-sixteenths of an inch in height, and to the right of each word a square shall be printed on the ballot in which the voter may indicate his preference. The face of the ballot and the stub must be in substantially the following form:

Hist. Laws '19, ch. 169, p. 540.

THE STATE OF NEW YORK
 COUNTY OF ...
 ...
 ...

IN SENATE		IN ASSEMBLY
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

...
 ...
 ...

*ballot, in aid of the voter, may be placed such words or explanations as "Vote for one," "Vote for three," "Yes," "No," and the like. The same margin must be left above and below the printed matter. * * **

When constitutional amendments or other questions are to be submitted to a vote of the people at any general election the question or questions to be voted on shall be printed immediately following the names of the candidates for county and precinct offices, and immediately preceding said questions on the ballot shall be printed a word or words indicating the nature of the questions to be voted on, as "constitutional amendments," and the following instructions to the voter: "To vote on the following, mark a cross (X) in the square at the right of yes or no." Immediately to the right of the questions to be voted on shall be printed the words: "Yes and No" in letters not less than three-sixteenths of an inch in height, and to the right of each word a square shall be printed on the ballot in which the voter may indicate his preference. The face of the ballot and the stub must be in substantially the following form:

Hist. Laws '19, ch. 169, p. 540.

SEC. 574. *Submission on Special Questions*: Whenever the Secretary of State has duly certified to the county auditor any question to be submitted to a vote of the people the county auditor shall have said question printed upon the regular official ballot in the same maner as prescribed in the preceding section for the printing of questions submitting constitutional amendments to a vote of the people. The county auditor shall also cause to be printed upon the regular official ballot any question required by law to be submitted to the vote of the electors of any locality and not to the State generally at any general election: *Provided, however*, That in all questions submitted to the voters of a municipal corporation alone it shall be the duty of the municipal clerk to provide the necessary tickets: *Provided, further*, In case any question is to be submitted to the voters of any county or any locality at a time when no general election is to be held the county auditor shall prepare ballots to be printed and furnished for each precinct where said questions are to be voted upon, and said ballots shall be prepared as follows:

The ballots shall be seven (7) inches wide and shall be attached to a stub or counterfoil two (2) inches wide by a perforated line. Said ballots shall be white in color and at the top of the ballots shall be words indicating the nature of the proposition to be voted upon, as "County Division" or "School Bond Issue," as the case may be. Below these words and one (1) inch from the upper margin on each ballot a line shall be printed reaching the full width thereof. From a point one (1) inch from the right end of this line a perpendicular line shall be printed reaching to the lower margin of the ballot. In the space to the left of this perpendicular line shall be printed the question to be submitted to the vote of the electors, as now required by law. In the space to the right of this perpendicular line two circles, each one-half inch in diameter, shall be printed, one above the other, with the word "Yes" to the left of the upper circle and the word "No" to the left of the lower circle. The voter may place a cross (X) within one of these circles, and thereby he votes. Should two or more questions be submitted to a vote on the same ballot they shall be separated from each other by a printed line running the full width of the ballot, and immediately below said printed line shall be the word or words indicating the nature of the question to be voted on,

as "County Division" or "School Bond Issue," as the case may be, and two circles, as provided above, shall be printed in the space to the right of each question. Such special ballots shall be of sufficient length to contain all questions submitted, printed in long primer type. The stubs or counter-foil shall contain the name of the county, the date of the election and shall be numbered consecutively from one upwards for each separate precinct in which said questions are voted upon.

Hist. C. L. 406. Laws 1917, ch. 93, sec. 2, p. 321.

SEC. 575. *Same: Errors and Omissions.* Whenever it shall appear by affidavit that an error or omission has occurred in the publication of the names or descriptions of the candidates nominated for office, or in the printing of the tickets, the Probate Court of the county, may, upon application of any elector, by order, require the County Auditor or Municipal Clerk to correct such error, or to show cause why such error should not be corrected.

Hist. C. L. 407.

Cited: McGrane v. Co. of Nez Perce, 18 I. 714, 727; 112 P. 312; Ann. Cas. 1912A, 165; 32 L. R. A. (N. S.) 730.

Defective Ballots: Correction: Where a candidate for a county office neglects to have a defect in the official ballot corrected as provided for in this section, he cannot, after the election is had and he finds himself defeated, raise the objection that the name of the successful candidate was improperly placed on the official ballot. Baker v. Scott, 4 I. 596; 43 P. 76.

SEC. 576. *Only Official Ballots Counted.* No ballot must be used or counted at any election except the legal ballot printed by the County Auditor, or, in the case of municipal elections, by the Clerk of the Municipality, and distributed according to law by the Distributing Clerk within the polling place. And no ticket must be distributed by the Distributing Clerk, or permitted to be used by the Election Officers, which has any mark or thing on the back or outside whereby it might be distinguished from any other ballot legally used on the same day. No ballot or ticket printed in imitation of the legal ticket furnished by the County Auditor, or, in the case of municipal elections, by the Clerk of the Municipality, according to law, shall be circulated on the day of election, or brought into the polling place, and no elector shall be permitted to vote any other ballot than the one he received from the Distributing Clerk.

Hist. C. L. 408.

Penalty Does not Apply to Electors: The prohibition contained in this section against election officers furnishing the electors with ballots containing distinguished marks, is directed against the officers charged with the preparation and furnishing of the ballots, and directs and commands the officers as to the manner and method of discharging their public duties, but the statute nowhere prescribes that the penalty for violating this duty or a failure to faithfully discharge it shall be visited upon the electors or avoid the election. *McGrane v. County of Nez Perce* (1910) 18 I. 714; 112 P. 312; Ann. Cas. 1912A, 165; 32 L. R. A. (N. S.) 730.

Numbering Ballots: To hold that the numbering of ballots by the election officers has the effect of rendering an election void, would place it within the power of the officers to disfranchise the entire electorate. *McGrane v. County of Nez Perce*, 18 I. 714; 112 P. 312;

Cited: *Huffaker v. Edgington* (1917) 30 I. 179; 163 P. 793.

SEC. 577. *Folding of Ballots:* Every ballot used at any general election must, before it is handed to the voter, be folded by the distributing clerk along the line separating the two columns on said ballot and stamped on the outside with the official election stamp. After the ballot has been marked by the voter, it shall be folded in the same manner so as to conceal its contents and to expose the impression of the official election stamp on the back.

Hist. C. L. 409. Laws 1917, ch. 93, sec. 3, p. 322.

SEC. 578. *Distribution of Ballots.* It shall be the duty of the County Auditor of the County (or the Municipal Clerk in the case of Municipal Elections), to furnish and cause to be delivered to the Judges of Election of each election precinct within the county (or within the municipality, in the case of municipal elections), in which an election is to be held, at the polling place of the precinct before the opening of the polls, the proper number of tickets required by this title: *Provided*, That not less than sixty (60) tickets shall be furnished for each fifty (50) electors registered in each precinct in the county (and in the case of municipal elections, each precinct in the municipality).

Hist. C. L. 410. Laws 1913, p. 384.

SEC. 579. *Record of Number of Ballots.* The County Auditor of each county shall keep a record of the number of tickets printed and furnished to each polling place and preserve the same for one year.

Hist. C. L. 411.

SEC. 580. *Delivery of and Receipt of Supplies.* The required number of tickets, together with the official stamp and ink pad for the purpose of stamping or designating the official tickets, as hereinbefore provided, shall be delivered

to the Judges of Election in sealed packages, with marks on the outside clearly designating the polling place for which they are intended, upon receipt of which at least a majority of the Judges of Election must return receipts therefor to the County Auditor in case of county elections, and to the clerk of the municipality in case of municipal elections, and the several auditors and clerks shall preserve the receipts for one year.

Hist. C. L. 412.

SEC. 581. *Instruction Cards and Sample Ballots.* The County Auditor of each county in case of a general election, and the several city clerks in case of city elections, shall prepare full instructions for the guidance of voters at such elections, as to obtaining tickets, as to the maner of marking them, and as to obtaining new tickets in place of those accidentally spoiled, and they shall respectively cause the same, together with copies of Sections 8111, 8112, and 8113, of the title relating to crimes against the elective franchise, to be printed in large, clear type, on separate cards, to be called Cards of Instruction. The County Auditor of each county, and the several city clerks in case of a municipal election, shall furnish four such cards to the Judges of Election in each precinct, and one additional card for each fifty registered electors or fractional part thereof, at the same time and in the same manner as the printed tickets. The Judges of Election shall post not less than one of such cards in each place or compartment provided for the preparation of tickets, and not less than three of such cards elsewhere in and about the polling places, upon the day of election. The County Auditor of each county, and the several city clerks in case of a municipal election, shall cause to be printed on tinted or colored paper, without official indorsement of any kind, and furnish to the Judges of Election of each election precinct, at the same time and in the same manner as the official tickets and official stamps, six sample or specimen tickets and one additional sample ticket for each fifty registered electors or fractional part thereof in the precinct. The sample tickets shall be printed like the official or regular tickets, and of the same size without the stub. There shall be posted in each of the compartments or booths, one of the sample tickets without the official stamp, and not less than four such tickets shall be posted elsewhere in and about the polling places on the day of election. It shall be

the duty of the same officers, at the same time and in the same maner, to provide and furnish to each polling place proper and necessary supplies and conveniences for marking the tickets.

Hist. C. L. 413.

CHAPTER X.

COMPILED STATUTES, CH. 33.

CONDUCT OF ELECTIONS.

SEC. 582. *Election Officers to Take Oath.* Before opening the polls, all officers of election must take and subscribe an oath to faithfully perform the duties imposed upon them by law. Any elector of the township may administer and certify such oath.

Hist. C. L. 414.

SEC. 583. *Opening and Closing of Polls.* At all elections to be held under this title, the polls must be opened at the hour of eight o'clock in the forenoon, if the regularly appointed judges of election and distributing clerk are present; but in case they are not present, then the polls must not be opened by the Judges or Distributing Clerk elected until the hour of nine o'clock, unless a majority of the regularly appointed Judges are present, and the polls must continue open until seven o'clock in the evening of the same day, at which time the polls must be closed; and upon opening the polls, one of the clerks, under the direction of the Judges, must make proclamation of the same; and thirty minutes before closing the polls, proclamation must be made in like manner, and the polls closed in half an hour thereafter.

Hist. C. L. 415.

SEC. 584. *Changing Polling Place.* Whenever it shall become impossible or inconvenient to hold an election at the place designated therefor, the Judges of Election, after having assembled as near as practicable to such place, and before receiving any vote, may adjourn to the nearest convenient place for holding the election, and at such adjourned place forthwith proceed with the election.

Hist. C. L. 416.

SEC. 585. *Same: Proclamation and Notice.* Upon adjournment any election, as provided in the preceding section, the judges shall cause proclamation thereof to be made, and shall post a notice upon the place where the adjournment

was made from, notifying electors of the change of polling place.

Hist. C. L. 417.

SEC. 586. *Opening Ballot Boxes.* Before receiving any ballots the Judge must, in the presence of any persons assembled at the polling place, open and exhibit, close and lock, the ballot boxes, and thereafter they must not be removed from the polling place until all the ballots are counted, nor must they be opened until after the polls are finally closed, and then in the presence of bystanders: *Provided*, That in precincts having two sets of election officers and duplicate ballot boxes, as provided for in Sections 627 to 631, inclusive, of this title, said ballot boxes may be opened during the election for the purpose of counting the ballots as in said sections provided.

Hist. C. L. 418.

SEC. 587. *Opening Supplies.* The Judges of Election on the opening of the polls, must break the sealed packages of election tickets, official stamp and other supplies, in the presence of bystanders.

Hist. C. L. 419.

SEC. 588. *Judges May Administer Oaths.* Either Judge may administer and certify any oath required to be administered during the progress of an election, and either Judge may challenge a voter of whose qualifications to vote he is in doubt, but in such case one of the remaining Judges must administer the oath.

Hist. C. L. 420.

SEC. 589. *Duties of Constable.* The constable of the precinct shall be in attendance at the polling place on the day of election, and, where there is no constable, the Judges of Election may appoint some capable person to act as such during the election, and he shall have the power to make arrests for disturbance of the peace, as provided by law for such officers, and he shall allow no one within the guard rail of the polling place except those who go to vote, and shall allow but one elector in a compartment at one time.

Hist. C. L. 421.

SEC. 590. *Voting to Continue During Election.* Voting may commence as soon as the polls are opened, and may be continued during all the time the polls remain open.

Hist. C. L. 422.

SEC. 591. *Delivery of Ticket to Elector.* An elector desiring to vote shall give his name and, if requested, to do so, his residence, to one of the Clerks of Election, who shall thereupon announce the same in a loud and distinct tone of voice, clear and audible, and if such name is found on the check list by the election officer having charge thereof, he shall likewise repeat the said name, and the voter shall be allowed to enter the space enclosed by the guard rail as hereinbefore provided. The Distributing Clerk shall give him one, and only one, ticket, and his name shall be immediately checked on said list by placing a mark on the registry list to denote that he has received a ticket, and the ticket must be stamped on the back and near the top of the ticket with the official stamp by the Distributing Clerk, and thereupon delivered to the elector. Besides the election officers, not more than one voter, in excess of the voting shelves or compartments provided, shall be allowed in said enclosed space at one time.

Hist. C. L. 423.

SEC. 592. *Manner of Voting:* On receipt of his ticket the voter shall forthwith and without leaving the enclosed space retire alone to one of the voting shelves or compartments so provided and shall prepare his ticket by marking in the appropriate margin or placing a cross (X) opposite the name of the candidate of his choice for each office to be filled, or by filling in or writing the name of the person for whom he wishes to vote in the blank space provided therefor under each office to be filled and following the names of the regularly nominated candidates and marking a cross (X) opposite such names. In voting for presidential electors he shall mark a cross (X) opposite the political designation of the candidates for President and Vice-President for whom he wishes to vote or by writing in the names of persons for Presidential Electors in the blank spaces provided therefor and marking a cross (X) opposite such names. In case of a question submitted to the vote of the people and appearing on the regular ballot, he shall mark in the appropriate margin or square a cross (X) against the answer which he desires to give. In case of questions submitted to voters of particular localities at special elections, he shall vote by marking in the appropriate margin or circle the cross (X) against the answer which he desires to give. Before leaving the voting shelf or compartment the voter shall fold

his ticket without displaying the marks thereon so as to expose the impression of the official stamp on the back and he shall keep the same so folded until he has voted. In case of the ballot voted at regular general election, he shall fold the same in the same manner in which it is folded by the distributing clerk before being given to the voter. After marking his ballot the voter shall hand it to one of the judges and announce his name. He shall mark his ticket or ballot without delay and shall quit said enclosed space as soon as he has voted.

No such voter shall be allowed to occupy a voting shelf or compartment already occupied by another, nor to remain within said enclosed space more than ten minutes, nor to occupy a voting shelf or compartment more than five minutes in case all of such shelves or compartments are in use and other voters are waiting to occupy the same. No voter, not an election officer, whose name has been checked on the list of the election officers, shall be allowed to re-enter said enclosed space during said election. It shall be the duty of the judges for the time being to secure the observance of the provisions of this section: *Provided*, That if any registered elector, who is blind or otherwise disqualified by reason of physical infirmities rendering such voter incapable of personally marking his ballot, desires to vote, then and in that case any two of the judges not of the same political party may, at the request of such elector, mark and prepare his ballot for him, placing an (X) mark in the proper place and opposite the names of the candidates for whom such elector desires to vote. When the ballot so marked by the judges is properly prepared and folded it shall be given to the elector, who shall deliver it to the proper judge to be deposited in the ballot box, as in other cases. The judges assisting any such physically incapacitated elector in the preparation of his ballot must not influence or attempt to influence such voter in the selection of candidates to be voted for; and any judge who has assisted any such elector who shall divulge to any person the name of any candidate for whom such elector voted shall be guilty of a misdemeanor.

Hist. C. L. 424.

Cross Reference: As to manner of voting, see Sec. 533, Compiled Statutes.

SEC. 592. Spoiled Ballots. No person shall take or remove any ticket from the polling place before the close of

the polls. If an elector inadvertently or by mistake spoils a ticket, he shall return it folded to the distributing clerk, who must, if satisfied of such inadvertence, give him another ticket. The ticket thus returned shall, without examination, be immediately cancelled by writing across the back, or outside of the ticket as folded, the words "Spoiled ticket, another issued," and deposit the defaced ticket in a box provided for that purpose. And no one shall be allowed within the guard rails of the polling place, except the election officers duly appointed, together with the number of voters, as provided in this chapter.

Hist. C. L. 425.

Cross Reference: Number of voters allowed inside the rails, see Sec. 591, Compiled Statutes.

SEC. 594. *Deposits of Ballots in Box.* The Judge to whom any ballot may be delivered shall, upon the receipt thereof, pronounce in an audible voice the name of the elector, and if no objection shall be made to him, and the Judges are satisfied that he is a legal voter, and is duly registered, and the official stamp is plainly visible on the outside of the folded ballot, he shall, without opening or examining, immediately deposit the ballot in the ballot box, and the clerks of the election shall enter the name of the elector in the poll books.

Hist. C. L. 426.

SEC. 595. *Same: Unstamped Ballots:* No Judge of Election shall deposit in any ballot box any ballot upon which the official stamp, as hereinbefore provided, for, does not appear. Every person violating the provisions of this section shall be guilty of a misdemeanor.

Hist. C. L. 426A.

SEC. 596. *Officers Not to Divulge Information.* No officer, Judge or Clerk shall communicate, except for some purpose authorized by law, before the polls are closed, any information as to the name or number on the registry list of any elector who has not applied for a ticket, or who has not voted at the polling place; and no officer, judge or clerk, or other person whomsoever, shall interfere with, or attempt to interfere with, a voter when marketing his ticket. No officer, judge or clerk, or other person, shall directly or indirectly, attempt to induce any voter to display his ticket after he shall have marked the same, or to make known to any person the name of any candidate for or against whom he may have voted.

Hist. C. L. 427.

SEC. 597. *Challenging Voters.* In case any person offering to vote is challenged, one of the judges must declare the qualifications of an elector to such person; if the person so challenged then declare himself duly qualified, and the challenge is not withdrawn, one of the judges must then tender him the Elector's Oath as provided by law.

Hist. C. L. 428. Laws 1913, p. 379.

SEC. 598. *Same: Special qualifications.* At any election where special qualifications are prescribed by law where a voter offers himself to vote and is challenged, he shall be advised by the election judge of such special qualification, and if he still desires to vote, and the challenge be not withdrawn, he shall be required to take and subscribe the following oath:

"State of Idaho, }
County of _____ } ss.

I, _____, being duly sworn, on my oath depose and say that I possess the qualifications required and prescribed by Section 502, Compiled Statutes of Idaho, and in addition thereto that I possess the following qualifications: (here insert special qualifications.)

Subscribed and sworn to before me this _____ day of _____, 19_____.

Election Judge."

Hist. C. L. 428a. Laws 1913, c. 92 par. 12, p. 376.

SEC. 599. *Same: Challenge for Want of Citizenship.* If the person be challenged as unqualified, on the ground that he is not a citizen, and will not exhibit his papers pertaining to his naturalization, the judges, or one of them, shall put the following questions:

1. Are you a citizen of the United States?
2. Are you a native or naturalized citizen?
3. Have you become a citizen of the United States by reason of the naturalization of your parents or one of them?
4. Where were your parents, or one of them, naturalized?

If the person offering to vote claims to be a naturalized citizen of the United States, he shall state, under oath, when and in what court he was naturalized.

Hist. C. L. 429.

SEC. 600. *Same: For Conviction of Felony.* If the challenge is on the ground that the person challenged has been convicted of felony and has not been pardoned, he must not be questioned; but the fact may be proved by the production of an authenticated copy of the record, or by the oral testimony of two witnesses and the non-production of a pardon.

Hist. C. L. 430.

SEC. 601. *Same: For Want of Residence: For Non-age.* If the person be challenged as unqualified on the ground that he has not resided in this state for six months immediately preceding the election, the judges, or one of them, shall put the following questions:

1. Have you resided in this State for six months immediately preceding the election, and during that time have you retained a home or domicile elsewhere?

2. Have you been absent from this State within the six months immediately preceding this election?

3. If so, when you left, was it for a temporary purpose, with the design of returning or did you intend remaining away?

4. Did you, while absent, look upon and regard this State as your home?

5. Did you, while absent, vote in any State or Territory?

If the person be challenged on the ground that he has not resided in the county thirty days, one of the judges shall question him as to his residence in the county, precinct or ward in a manner similar to the before-mentioned method of questioning a person as to his residence in this State.

If the person be challenged as unqualified on the ground that he is not twenty-one years of age, the judges, or one of them, shall put the following questions: "Are you twenty-one years of age, to the best of your knowledge and belief?" The judges of election, or one of them, shall put all such other questions to the person challenged under the respective heads aforesaid, as may be necessary to test his qualifications as an elector at that election.

Hist. C. L. 431.

SEC. 602. *Same: Residence: How Determined.* The Judges of Election, in determining the residence of a person offering to vote, shall be governed by the following rules, so far as they may be applicable:

1. That place shall be held and considered to be the residence of a person in which his habitation is fixed, and to which, whenever he is absent, he has the intention of returning.

2. A person shall not be considered or held to have lost his residence who shall leave his home and go into another State, Territory or county of this State, for temporary purpose merely with an intention of returning.

3. If a person remove to any other State or to any of the Territories, with the intention of making it his permanent residence, he shall be considered and held to have lost his residence in this State.

4. If a person remove from one county in this State to any other county in the State with the intention of making it his permanent residence, he shall be considered and held to have lost his residence in the county from which he removed.

Hist. C. L. 432.

SEC. 603. *Oath of Challenged Person.* If the challenge be not withdrawn after the person offering to vote shall have answered the questions put to him as aforesaid, one of the judges shall tender to him the following oath: "You do solemnly swear (or affirm) that you are a citizen of the United States, of the age of twenty-one years; that you have been a resident of this State for six months next immediately preceding this election, and have not retained a home or domicile elsewhere; that you have been for the last thirty days, and now are, a resident of this county, and that you have not voted at this election."

Hist. C. L. 433.

SEC. 604. *Duty of Clerks.* Whenever any person's vote shall be received after having taken the oath or affirmation prescribed in the preceding section, it shall be the duty of the clerk of the election to write on the poll books, at the end of the person's name, "Sworn."

Hist. C. L. 434.

SEC. 605. *Judge's Duty to Challenge.* It shall be the duty of any judge of election to challenge any person offering to vote whom he believes not to be qualified as an elector.

Hist. C. L. 435.

SEC. 606. *Refusal to Take Oath.* If any person challenged refuses to take the oath or affirmation tendered, or refuses to be sworn and to answer the questions touching the matter of naturalization, he must not be allowed to vote: *Provided*, That after such oath shall have been taken, the judges may nevertheless refuse to permit such person to vote if they shall be satisfied that he is not a legal voter.

Hist. C. L. 436.

Cited: Olympia M. & M. Co. v. Kerns (1913) 24 I. 881; 135 P. 255; 59 L. Ed. 542; 35 S. C. R. 415; 236 U. S. 211; Ann. Cas. 1917C, 1021.

SEC. 607. *Disposal of Stubs and Defaced Tickets.* As soon as the polls are finally closed the distributing clerk must deliver to the Judges of Election the book or books of tickets from which tickets have been taken during the election, and the box containing the defaced, mutilated or returned ballots.

Hist. C. L. 437.

SEC. 608. *Form of Poll Lists.* The following is the form of poll lists to be kept by the judges and clerks of election:

Poll Lists.

Of the election held in the precinct of _____, in the County of _____, on the _____ day of _____, in the year A. D. one thousand nine hundred and _____, A. B., C. D., and E. F., Judges, and G. H., I. J., and K. L., Clerks of said election, were respectively sworn (or affirmed), as the law directs, previous to their entering on the duties of their respective offices.

Number and Names of Electors Voting.

NO.	NAME	NO.	NAME
1	A. B.	3	E. F.
2	C. D.	4	G. H.

We hereby certify that the number of electors voting at this election amounts to _____

Attest:

G. H.,	} Clerks.	A. B.,	} Judges of Election.
I. J.,		C. D.,	
K. L.,		E. F.,	

Hist. C. L. 438.

CHAPTER XI.

COMPILED STATUTES, CH. 34.

ABSENT VOTING.

SEC. 609. *Absent Voting Authorized.* Any qualified elector of the State of Idaho who is absent or expects to be absent from the election precinct in which he resides on the day of holding any election under any of the laws of this State in which an official ballot is required, and if registration is required for such election, who is duly registered therefor, may not vote at any such election, as hereinafter provided.

Hist. C. L. 32: 1. Laws 1917, ch. 142, sec. 1, p. 453.

SEC. 610. *Application for Ballot.* Any such absent elector may make application to the county auditor, the city clerk or other proper officer charged by law with the duty of issuing official ballots for such election, on a blank to be furnished by such issuing officer, for an official ballot or ballots of the kind or kinds to be voted on at such election, which application shall be made not more than fifteen (15) days nor less than one (1) day preceding such election, and shall be duly signed and sworn to by such elector before an officer authorized to administer oaths and shall be in substantially the following form:

"APPLICATION FOR BALLOT TO BE VOTED AT
THE ELECTION,, 19.....

State of..... }
County of..... } ss.

I,, do solemnly swear that I am a duly qualified and registered elector of the State of Idaho and of..... County, at..... in the election precinct. I expect to be absent from said election precinct on the date of said election. I hereby apply for an official ballot or ballots to be voted by myself at such election.

Signed,

Subscribed and sworn to before me this..... day of....., 19.....

.....
(Official Title)."

Provided, That if for a primary election ballot, such application shall designate the applicant's political affiliation.

The blanks in said statement shall be filled by the issuing officer to the extent necessary to identify the election at which said ballot or ballots are proposed to be cast. The issuing officer shall keep as a part of the records of his office a list of all applications so received and of the maner and time of delivery of ballots thereon.

Hist. C. L. 32: 2. Laws 1917, ch. 142, sec. 2, p. 454.

SEC. 611. *Issuance of Ballot:* The officer receiving such application shall forthwith deliver to said applicant elector personally or shall mail to him by registered mail, postage prepaid, an official ballot or ballots, one of each kind thereof, to be voted on by the electorate at such election.

Hist. C. L. 32:3. Laws 1917, ch. 142, sec. 3, p. 454.

SEC. 612. *Folding of Ballots: Inclosure.* Such officer shall fold said ballot or ballots as specified in the law controlling in said election and enclose same in an official envelope, unsealed, to be furnished by him, which envelope shall bear on its face the name, official title and postoffice address of such officer, and on the other side a printed statement substantially as follows:

"I am a duly qualified and registered elector of the State of Idaho,County, election precinct. My personal attendance in said election precinct on....., 19....., the date of the election in said precinct, is prevented.

Dated , 19.....

Signed:"

Provided, That if the ballot or ballots enclosed are for a primary election, the statement must designate the elector's political affiliation.

The blanks in said statement shall be filled by such issuing officer to the extent necessary to identify the election at which said ballot or ballots are proposed to be cast. There shall also be printed upon the back of said official envelope a copy of Section 613 and 621 of this Chapter.

Hist. C. L. 32: 4. Laws 1917, ch. 142, sec. 4, p. 455.

SEC. 613. *Return of Ballot:* On marking such ballot or ballots such absent elector shall refold same as theretofore folded and shall enclose the same in said official envelope and seal said envelope securely and mail by registered mail or deliver it in person to the officer who issued same at least

one (1) day before the date of such election. Said ballot or ballots shall be so marked, folded and sealed by said voter in private and secretly.

Hist. C. L. 32: 5. Laws 1917, Ch. 142, Sec. 5, p. 455.

SEC. 614. *Transmission of Ballots to Polls*: On receipt of such absent elector's ballot or ballots said officer receiving same shall forthwith enclose same, unopened, together with the application upon which said ballot or ballots were issued, in a carrier envelope endorsed with the name and official title of such officer and the words: "Absent Voter's Ballot, to be opened only at the polls on election day while said polls are open." He shall hold the same until the delivery of the official ballots to the judges of election of the precinct in which said elector resides and shall deliver said ballot or ballots to said judges with such official ballots, or in case said ballot or ballots are received by such officer after the delivery of the official ballots to such judges he shall forthwith, upon its receipt, enclose it in a carrier envelope, as heretofore prescribed, addressed to the judges of such election precinct in their official capacity and mail the same, postage prepaid, to such judges of election or deliver or send the same by agent to such judges without, however, incurring any expense for such delivery to the county or municipality, as the case may be.

Hist. C. L. 32: 6. Laws 1917, Ch. 142, Sec. 6, p. 455.

SEC. 615. *Deposit of Ballot*: Between the opening and closing of the polls on such election day the judges of election of such precinct shall open the carrier envelope only, announce the absent voter's name and compare the signature upon the application with the signature of the ballot envelope, and in case they find such signatures to correspond and the applicant to be a duly qualified elector of the precinct and that he has not theretofore voted at said election they shall open the ballot envelope and remove the ballot or ballots without destroying the endorsements on the envelope, or unfolding nor permitting the ballot or ballots to be unfolded, and having endorsed the ballot or ballots as other ballots are required to be endorsed shall deposit the same in the proper ballot box and cause the absent voter's name to be entered on the poll books the same as though he had been present and voted in person.

Hist. C. L. 32: 7. Laws 1917, Ch. 142, Sec. 7, p. 456.

SEC. 616. *Rejection of Defective Ballots:* The judges shall reject such ballot or ballots as do not conform to the foregoing requirements, or in case the ballot envelope has been theretofore opened or contains more than one ballot of any one kind, and rejected ballots shall each be endorsed as "Rejected," with the reasons therefor and fastened to the ballot envelope and application accompanying same. All rejected ballots shall be enclosed and securely sealed in an envelope upon which the judges shall endorse "Defective absentee ballots" with the name of the precinct and the date of election at which they were rejected, signed by said judges, and shall return to the same officer and in the same manner as by law provided for the return and preservation of spoiled or mutilated ballots. All applications and ballot envelopes shall be returned by the judges to the officer to whom the returns of the election are made.

Hist. C. L. 32: 8. Laws 1917, Ch. 142, Sec. 8, p. 456.

SEC. 617. *Challenging Absentee's Votes.* The vote of any absent voter may be challenged for cause as though he were present and the judges of election shall have all the powers and authority given by law to hear and determine the legality of such absentee voter or ballot.

Hist. C. L. 32: 9. Laws 1917, Ch. 142, Sec. 9, p. 456.

SEC. 618. *Effect of Intervening Death of Absent Voter:* Whenever proof of the death of any such absent voter, occurring prior to the opening of the polls for such election, shall be furnished to the judges at said election before the ballot of such voter is voted such ballot shall be returned with unused ballots to the officer to whom unused ballots are returned, but the casting of such ballot shall not invalidate the election.

Hist. 32: 10. Laws 1917, Ch. 142, Sec. 10, p. 457.

SEC. 619. *Double Voting Prohibited:* No elector whose absentee ballot shall have been voted at any election shall vote in person at such election and no absentee ballot of such voter shall be voted if said elector shall have theretofore voted at said election in person.

Laws 1917, Ch. 142, Sec. 11, p. 457.

Hist. C. L. 32: 11.

SEC. 620. *General Election Laws Applicable:* All the provisions of the election laws in force in this State at the time of any such election and not inconsistent with this Chapter

relative to the furnishing of ballots and ballot boxes, the canvassing and the making of return of the election and governing the election so held shall apply with full force and effect to all cases of voting created by virtue hereof.

Hist. 32: 12. Laws 1917, Ch. 142, Sec. 12, p. 457.

SEC. 621. *Penal Provisions*: Any person who knowingly shall make falsely the affidavit hereinbefore provided shall be guilty of perjury, and, upon conviction thereof, shall be punished in the manner provided by law for such offense. Any person who falsely personates another in making said application or statement in this Chapter provided shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by imprisonment in the county jail not exceeding ninety (90) days, or by a fine not exceeding Five Hundred Dollars (\$500.00.) If any person who, having procured an official ballot or ballots as heretofore provided, shall neglect or refuse to return the same to the issuing officer within the time and in the manner in this Chapter provided or shall wilfully violate any provision of this Chapter he shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding ninety (90) days or by a fine not exceeding Five Hundred Dollars (\$500.00). Official neglect or malfeasance by any of the officers named in this Chapter in the performance of their duties created by virtue of the provisions hereof is governed by the provisions of Section 8096.

Hist. C. L. 32: 13. Laws 1917, Ch. 142, Sec. 13, p. 457.

SEC. 622. *Interpretation of Chapter*: This Chapter shall be deemed to provide a method of voting in addition to the method provided by other statutes and to such extent as amendatory of such other statutes relating to the manner and method of voting.

Hist. C. L. 32: 14. Laws 1917, Ch. 142, Sec. 14, p. 457.

CHAPTER XII.

COMPILED STATUTES, CH. 35.

CANVASS OF RETURNS.

ARTICLE I.

CANVASS OF JUDGES.

SEC. 623. *Canvass of Votes*. When the polls are finally closed the Judges of Election must immediately proceed to

canvass the votes given at such election. The canvass must be public, in the presence of bystanders, and must be continued without adjournment until completed, and the result thereof declared.

Hist. C. L. 439.

SEC. 624. *Comparison of Poll Lists, Ballots and Stubs: Void Ballots.* The canvass must commence by comparison of the poll lists from the commencement, and a correction of any mistake that may be found therein, until they are found to agree. The box must then be opened, and the ballots found therein counted by the judges, unopened, and the number of ballots in the box must agree with the number marked on the poll list or registry list as having received a ticket, and this number, together with the number of defaced, mutilated and returned ballots, must agree with the number of stubs or counterfoils in the books from which the tickets have been taken.

Any ballot or part of a ballot from which it is impossible to determine the elector's choice, shall be void, and shall not be counted: *Provided*, That when a ballot is sufficiently plain to gather therefrom a part of the voter's intention, it shall be the duty of the judges to count such part.

Hist. C. L. 440.

SEC. 625. *Count: Certificates by Judges and Clerk.* The ballots and poll lists agreeing, the Board must then proceed to count and ascertain the number of votes cast, and the clerks must set down in their poll books the names of every person voted for and then at full length the office for which such person received such votes, and the number he did receive, the number being expressed at full length; such entry to be made, as nearly as circumstances will permit, in the following form, to-wit:

At an election held at the house of (A. B.) in the town (district or precinct) of....., in the County of....., and in the State of Idaho, on the.....day of.....A. D., the following named persons received the number of votes annexed to their respective names for the following described offices, to-wit: (A. B.) has....., votes for member of Congress: (I. J.) has.....votes for member of State Senate; (K. L.) has.....votes for member of House of Representatives, (and in like manner for any person voted for).
Certified by us.

Attest:

S. T.	} Clerks of Election.	O. P.,	} Judges of Election.
U. V.,		Q. R.,	
W. Y.,		M. N.,	

Hist. C. L. 441.

SEC. 626. *Transmission of Supplies to County Commissioners: Custody.* After the canvass of the votes the judges of election must enclose and seal one of the poll lists furnished by the Clerk of the District Court, as provided by law; also all stubs and unused ticket books, elector's and freeholders oaths, defaced or mutilated ballots, and the election stamp, under cover, directed to the Clerk of the Board of County Commissioners of the county in which such election was held. The packages thus sealed must be delivered direct to the said clerk personally, or transmitted by special messenger without expense to the county, or deposited in the nearest postoffice, by one of the judges to be chosen by lot, and the postage thereon and the fees for registering the same must be fully prepaid, and said package must be duly registered and receipt therefor taken. The second poll list, together with the ballots, must be, by said judges, placed in the ballot box, and by them sealed up and then deposited with one of said judges, to be decided by lot if they cannot otherwise agree; and the said poll list and ballots must be kept with the seal unbroken for at least eight months, unless the same is required as evidence in a court of law in any case arising under the election laws of this State, and then only when the judge having said ballot box in charge is served with a subpoena requiring him to produce the same in court as evidence in any such before mentioned case, when the same may be opened under the direction of the court.

And the third poll list shall be transmitted to the Clerk of the District Court within ten days after such election, as provided by law.

Hist. C. L. 442. Laws 1913, p. 379.

Application: This section applies only when the returns of the judges are properly made, and not when the returns are imperfect and are sent back to the judges for correction. Where the returns have been rejected, however, the judges may, under the provisions of Section 448, Revised Codes, open the ballot box for the purpose of correcting the returns. *Davies vs. Board of County Commissioners* (1914), 26 I., 450; 143 P., 945.

SEC. 627. *Appointment of Two Sets of Officers.* In every precinct where, at the General Election then next preceding there were more than one hundred votes cast for the office of Governor, the Board of County Commissioners of the county wherein the same is situated, shall, at the time provided for the appointment of election officers, appoint two sets of such officers, and in making such appointment shall designate which set shall act under the provisions of this and the following Sections of this Chapter. And such Board shall also make suitable provision for the carrying of these Sections into effect.

Hist. C. L. 443.

SEC. 628. *Duplicate of Ballot Boxes.* When, at any election in any precinct to which these Sections apply, five votes shall have been cast, another ballot box for receiving ballots shall be used, and the first ballot box shall be closed and delivered to such judges designated, as provided in the preceding Section, who shall proceed to the place provided for them, and shall at once count the votes in said ballot box; and when counted, they shall return said emptied ballot box to the judges receiving the ballots and otherwise conducting the election, and the latter shall then deliver to the judges who were designated to count the ballots, the second ballot box, and such judges shall immediately count the ballots therein contained as above provided; and they shall continue so to count the ballots and so to exchange the ballot boxes till the close of the polls, after which time both sets of judges shall, acting separately, count the remaining ballots, dividing the same between them.

Hist. C. L. 444. Laws 1913, p. 94.

SEC. 629. *Counting of Ballots: Witnesses: Concealment of Results.* The Board of County Commissioners of the several counties must provide two sets of ballot boxes for all precincts where these sections apply, and shall provide a suitable and convenient place or room immediately adjoining the place where the election is being held, for the use of the election officers counting the ballots during the day. Such counting may be witnessed by one representative from each of the political parties represented upon the official ballot, which representatives shall be designated in writing by the chairman and secretary of the respective County Central Committees, or in case of a city election by the City Central Committee, and who shall each take and subscribe

an oath before one of the Judges of Election that he will not, prior to the closing of the polls, communicate in any manner, directly or indirectly, by word or sign, the progress of the counting, nor the result so far as ascertained, nor any information whatsoever in relation thereto; and such representatives and the judges counting the ballots shall be confined to the room or place provided and shall not leave the same during the count except in case of necessity, and then in the custody of the Constable of Election; nor shall any such election officers or party representative in any manner, directly or indirectly, by word or sign, disclose or communicate the progress of the counting, nor the result so far as ascertained, nor any information whatsoever in relation thereto, until the polls are closed.

Any person who shall intentionally ascertain or attempt to ascertain the progress or state of the count before the close of the polls, and any officer of election or party representative designated as aforesaid, who shall violate any of the provisions of this Section, shall be guilty of a felony, and shall be punished by a fine not to exceed one thousand dollars, or imprisonment in the penitentiary for a period not to exceed one year, or by both such fine and imprisonment.

Hist. C. L. 445.

SEC. 630. *Judges to Join in Making Return.* All the Judges of Election shall join in making the return to the Board of County Commissioners.

Hist. C. L. 446.

SEC. 631. *Application of Sections.* These sections shall only apply to General Elections, and, except as herein modified, the General Election laws are in every way applicable to the precincts acting under the provisions hereof, and to all the officers of election.

Hist. C. L. 447.

ARTICLE II.

CANVASS OF COUNTY COMMISSIONERS.

SEC. 632. *Canvass of Returns: Abstracts of Votes: Certificate of Election.* The Board of County Commissioners, the Auditor acting as clerk, in the several counties, must act as a Board of Canvassers of elections, and must, on the tenth day after any General or Special Election, or sooner, if all the returns be received, and any two of the Commissioners are present, proceed publicly, at their office, to open the returns and canvass the votes of said election, and make

up abstracts thereof; and it is their duty to canvass and make up abstracts of all returns that are intelligible on their face and which are sufficiently authenticated to show what returns they are; and if any returns are rejected on account of informality, ambiguity or uncertainty—and none must be rejected for other causes—then it is the duty of the Board to deliver the returns so rejected to the Sheriff of the county, who must proceed at once to summon and call together the Board of Judges of Election of the precinct from which said returns were received, and inform them that such return has been rejected; and it is the duty of such Board of Judges to meet publicly, at the place where the election was held in their precinct, immediately after receiving such notice, and at once proceed to put said returns in due form and certify to the same; and for the purpose of so doing they may have the ballot box brought in and opened in their presence and the contents thereof inspected, and when said returns have been duly corrected they must be delivered into the hands of the Sheriff, and the Board of Canvassers may adjourn, to await the correction of said returns, for the period of not more than five days at one time, nor more than ten days in all. When said canvass is completed the abstracts must be made up and signed by the Board. The abstracts shall be made out in the following manner:

The abstracts of votes for electors for President and Vice-President of the United States shall be on one sheet, and the abstract of votes for Representative in Congress shall be on another sheet, and the abstract of votes for officers of the executive department shall be on another sheet, and the abstract of votes for Senator shall be on another sheet, and the abstract of votes for Representative shall be on another sheet, and the abstract of votes for Judges of the Supreme Court shall be on another sheet, and the abstract of votes for Judges of the District Court shall be on another sheet, and the abstract of votes for county and precinct officers shall be on another sheet; and it shall be the duty of the Auditor of the county immediately to make out a certificate of election to each of the persons having the highest number of votes for county and precinct officers, respectively, and cause such certificate to be delivered to the person entitled to it. If any two or more persons have an equal number of votes for the same county or precinct office, and a higher

number than the other person, the County Commissioners shall immediately determine by lot which of the two candidates shall be elected.

Hist. C. L. 448.

Cited: Roberts vs. Kartzke (1910), 18 L., 552; 111 P. 1.

Duty of Canvassers: The Board of County Commissioners in acting as a Board of Canvassers, has no authority to declare any person elected to an office, but must make out the abstracts of votes for each office separately, and deliver them to the Auditor whose duty it is, as Auditor, and not as Clerk of the Board, to make out a certificate of election to each of the persons having the highest number of votes.

Cunningham vs. George (1892), 3 L., 456; 31 P. 809.

Correction of Returns by Judges: Under this section the Judges of Election have authority, when the returns have been rejected, to re-open the ballot boxes for the correction of the same. Davies vs. Board of County Commissioners (1914), 26 L., 450; 143 P., 945.

SEC. 633. *Disposition of Abstracts of Votes.* The Auditor of the county, immediately after making out abstracts of votes given in his county, shall make a copy of such abstracts and deliver or transmit same in a registered package by mail to the office of the Secretary of State; the original abstracts he shall file and record in a book in his office to be kept for that purpose. He shall also certify to the abstracts and copies, and affix thereto the county seal, and the said Auditor shall indorse on the back of each abstract: "Certified copy of the abstract of votes cast for Governor, etc., members of the Legislature, etc., (as the case may be) cast at the regular election in.....County,, 19......"

Hist. C. L. 449.

ARTICLE III.

STATE BOARD OF CANVASSERS.

SEC. 634. *Constitution of Board.* The Governor, Secretary of State, State Auditor, State Treasurer and Attorney General, or any three of them, shall constitute the State Board of Canvassers, and shall canvass the abstracts of votes cast in the different counties of the State for electors of President and Vice President of the United States, for Representatives in Congress, for Judges of the Supreme Court and District Courts, and for Senators and Representatives and all State officers.

Hist. C. L. 450.

Cited: Olympia M. & M. Co. vs. Kerns (1913) 24 L. 481; 136 P. 255; dis. 236, U. S., 211; 59 L. Ed., 542; 35 S. C. R., 415; Ann. Cas., 1917C, 1021.

SEC. 635. *Delay in Remitting Abstracts.* If from any county no such abstract of votes shall have been received within twenty days next after election by the Secretary of State, he shall dispatch a special messenger to obtain a copy of the same from the County Auditor of such county, and such County Auditor shall immediately, on demand of such messenger, make out and deliver to him the copy required, which copy of the abstract of votes the messenger shall deliver to the Secretary of State without delay. The said messenger shall receive as compensation for his services three dollars per day and fifteen cents for each mile traveled in going to and returning from the county seat of the said county, by the usual route, to be paid by the county.

Hist. C. L. 451.

SEC. 636. *Meeting of Board.* For the purpose of canvassing the result of elections, the State Board of Canvassers shall meet at the office of the Secretary of State, at ten o'clock of the forenoon of the twentieth day after any election for any of the officers mentioned in Section 634 (if it be not on Sunday; if it be on Sunday, then they shall meet on the twenty-first day), when they shall, if the returns from all the counties of the State be in possession of the Secretary of State, proceed to canvass the votes. If the returns are not all in, they shall adjourn from time to time, as they deem proper, to await the receipt of all the returns: *Provided, however,* That on the second Wednesday of December next after the election, they shall canvass the votes, whether all the returns be received or not.

Hist. C. L. 452.

SEC. 637. *Duties of Board: Statement of Result.* The State Board of Canvassers, when met in accordance with law and a quorum (three) being present, shall proceed to examine and make statement of the whole number of votes given at any such election for all the officers mentioned in Section 634, that shall have been voted for in said election, which statement will show the names of the persons to whom such votes shall have been given for either of the said offices, and the whole number given to each distinguishing the several districts and counties in which they were given. They shall certify such statement to be correct, and subscribe their names thereto, and they shall thereupon determine what persons have been, by the greatest number of

votes duly elected to such offices, or either of them, and shall indorse and subscribe on such statement a certificate of their determination, and deliver it to the Secretary of State.

Hist. C. L. 453.

Duty of Canvassers: It is not necessary for the State Board of Canvassers to declare in terms whether, in their opinion, any amendment to the Constitution has been adopted or not.

Hays vs. Hays (1897), 5 L., 154; 47 P., 732; Ann. Cas., 1916B, 1005.

Ministerial Duties: The duties of the state canvassing board are adding up the votes received by the several candidates, as returned by the several county boards, ascertaining the total vote, and declaring and certifying the result. These are purely clerical, ministerial and administrative acts, and involve no judicial discretion. *Lansdon vs. S. Bd. of Canvassers* (1910), 18 L., 596; 111 P., 133; Ann. Cas., 1913A, 703.

SEC. 638. *Same: In Case of Tie Vote.* If any two or more persons have an equal and the highest number of votes for member of either House of the Legislature, for Judge of the Supreme or District Courts, or for any State office, other than those mentioned in Section 1, of Article 4, of the Constitution, the State canvassers shall proceed to determine, by lot, which of the candidates shall be declared elected. Reasonable notice shall be given to each candidate of the time when such election will be so determined.

Hist. C. L. 454.

Cited: Olympia M. & M. Co. vs. Kerns (1913), 24 L., 481; 135 P., 255; dis. 236 U. S., 211; 59 L. Ed. 542, 35 S. C. R., 415 Ann. Cas. 1917C, 1921.

SEC. 639. *Record of Statement: Certificates of Election.* The Secretary of State shall record in his office, in a book to be kept by him for that purpose, each certified statement and determination as made by the State Board of Canvassers, and shall, without delay, make out and transmit to each of the persons thereby declared to be elected a certificate of his election, certified by him under his seal of office.

Hist. C. L. 455.

Cross References: Certificate of election is prima facie evidence of right to membership in Legislature.

Sec. 77, Compiled Statutes.

SEC. 640. *List of Members of Legislature.* Upon the day specified by law for the assembling of the Legislature, the Secretary of State shall lay before each house a list of the members elected thereto, with the districts they represent, in accordance with the returns in his office.

Hist. C. L. 456.

ARTICLE IV.

ERRORS AND MISTAKES IN BALLOTS AND RETURNS.

SEC. 641. *Misspelled Names on Ballots.* Whenever the Judges of Election in any precinct or ward discover in the canvassing of votes that the name of any candidate voted for be misspelled, or the initial letters of his Christian name or names be transposed or omitted in part, or altogether, on the ballot, the vote or votes for such candidate shall be counted for him, if the intention of the elector to vote for him be apparent; and whenever the Board of County Canvassers, or of State Canvassers, shall find that the returns from any precinct, ward, county or district (as the case may be) do not strictly conform to the requirements of law, in the making, certifying and returning of the same, the votes polled in such precinct, ward, county or district shall, nevertheless, be canvassed and counted, if such returns shall be sufficiently explicit to enable such boards, or any person or persons authorized to canvass votes and returns, to determine therefrom how many votes were polled for the several persons who were candidates and voted for at the election of which the votes are being canvassed.

Hist. C. L. 457.

Cited: Lansdon vs. State Board of Canvassers, 18 I., 596; 111 P., 133.

Ministerial Duties of State Board: It is not the business of the state board to determine whether any illegal votes have been cast or not. Their duties are purely clerical, ministerial and administrative and involve no judicial discretion. Lansdon vs. S. Bd. of Canvassers (1910), 18 I., 596; 111 P., 133; Ann. Cas. 1913A, 703.

Judisdiction of State Board: Under this and the next section, the state canvassing board, has power to send the returns from any county back for correction; but whether it does so, or declines to do so, is not acting in excess of its jurisdiction to canvass the returns and declare the result. Lansdon vs. S. Bd. of Canvassers (1910), 18 I., 596; 111 P., 133, 134.

SEC. 642. *Correction of Mistakes.* If upon proceeding to canvass the votes it shall clearly appear to the canvassers that in any statement produced to them certain matters are omitted in such statement which should have been inserted, or that any mistakes which are clerical, merely, exist, they shall cause the said statement to be sent by one of their number (whom they shall depute for that purpose) to be precinct or ward judges, or to the County Board of Canvassers (as the case may be) from whom they were re-

ceived, to have the same corrected; and the Judges of Election or County Auditor (as the case may be), when so demanded, shall make such correction as the facts of the case require, but shall not change or alter any decision before made by them, but shall only cause their canvass to be correctly stated; and the Canvassing Board may adjourn from day to day for the purpose of obtaining and receiving such statement: *Provided, always*, That they shall not delay counting past the day provided by law for the completion of the canvass.

Hist. C. L. 458.

Cross Reference: Day provided for completion of canvass. See Sec. 636, Compiled Statutes.

Cited: Lansdon vs. State Board of Canvassers (1910), 18 I., 596; 111 P., 133; Ann. Cas. 1913A, 703.

CHAPTER XIII.

COMPILED STATUTES, CH. 36.

PRESIDENTIAL ELECTORS.

SEC. 643. *Certificates of Election.* The Secretary of State shall prepare lists of the names of the Electors of President and Vice President of the United States, elected at any election, procure thereto the signature of the Governor, affix the seal of the State to the same, and deliver one of such certificates thus signed to each of said Electors on or before the second Wednesday in December next after such election.

Hist. C. L. 459.

Cited: State ex rel. Spofford vs. Gifford (1912), 22 I., 613; 126 P., 1060.

SEC. 644. *Election for Presidential Electors.* There shall be an election held in the State for the election of such Electors, at the times appointed by any law of the Congress or the Constitution of the United States for such election, and when such election shall be special, the same shall be called and held, and the votes polled and canvassed, in all respects as at a General Election, and the duties of the Electors so elected shall be the same as prescribed by law for Electors elected at a general election.

Hist. C. L. 460.

Not State Officers: Presidential Electors are not State officers. State ex rel. Spofford vs. Gifford (1912), 22 I., 613, 632; 126 P.,

1060.

SEC. 645. *Meeting of Electors.* The Electors chosen to elect a President and Vice President of the United States shall, at twelve o'clock noon on the day which is or may be directed by the Congress of the United States, meet at the seat of government of this State, and then and there perform the duties enjoined upon them by the Constitution and laws of the United States.

Hist. C. L. 461.

Cited: State ex rel. Spofford vs. Gifford (1912), 22 I., 613; 126 P., 1060.

Term of Office: Presidential electors have no regular terms of office, but discharge their duties at one meeting. State ex rel. Spofford vs. Gifford (1912), 22 I., 613; 126 P., 1060.

SEC. 646. *Same: Notice to Governor: Vacancies.* Each Elector of President and Vice President of the United States shall, before the hour of twelve o'clock noon on the day next preceding the day fixed by the law of Congress to elect a President and Vice President, give notice to the Governor that he is at the seat of government and ready at the proper time to perform the duties of an Elector; and the Governor shall forthwith deliver to the Electors present a certificate of all the names of the Electors; and if any Elector named therein fails to appear before nine o'clock on the morning of the day of election of President and Vice President as aforesaid, the Electors then present shall immediately proceed to elect, by ballot, in the presence of the Governor, persons to fill such vacancies.

Hist. C. L. 462.

Cited: State ex rel. Spofford vs. Gifford, 22 I., 613; 126 P., 1060.

SEC. 647. *Filling Vacancies: Tie Vote.* If more than the number of persons required to fill the vacancies, as aforesaid have the highest and an equal number of votes, then the Governor, in the presence of the electors attending, shall decide by lot which of said persons shall be elected; otherwise they, to the number required, having the greatest number of votes shall be considered elected to fill such vacancies.

Hist. C. L. 463.

Cited: State ex rel. Spofford vs. Gifford, 22 I., 613; 126 P., 1060.

SEC. 648. *Notification of Election to Fill Vacancy.* Immediately after such choice is made the names of the persons so chosen shall forthwith be certified to the Governor by the Electors making such choice; and the Governor shall

cause immediate notice to be given in writing to the Electors chosen to fill such vacancies; and the said persons so chosen shall be Electors, and shall meet the other Electors at the same time and place, and then and there discharge all and singular the duties enjoined on them as Electors aforesaid by the Constitution and laws of the United States and of this State.

Hist. C. L. 464.

Cited: State ex rel. Spofford vs. Gifford, 22 I., 613; 126 P., 1060.

SEC. 649. *Compensation of Electors.* Every Elector of this State for the election of President and Vice President of the United States, hereafter elected, who shall attend and give his vote for those offices at the time and place appointed by law, shall be entitled to receive the sum of five dollars per day for each day's attendance at such election, and fifteen cents per mile for each mile he shall travel in going to and returning from the place where the Electors shall meet, by the most usual traveled route, to be paid out of the general fund, and the State Auditor shall audit the amount and draw his warrant for the same.

Hist. C. L. 465.

Cited: State ex rel. Spofford vs. Gifford, 22 I., 613; 126 P., 1060.

CHAPTER XIV.

COMPILED STATUTES, CH. 37.

REMOVAL OF COUNTY SEATS AND CHANGING COUNTY BOUNDARIES.

SEC. 650. *Time for Holding County Seat Election.* All elections for the removal of county seats shall be held at the same time and place at which general elections are held.

Hist. C. L. 466.

Cited: Lippincott vs. Carpenter, 22 I., 675; 127 P., 557.

Cross Reference: Question of removal of county seats to be presented not more than once in six years: Constitution XVIII, 2.

SEC. 651. *Petition for Removal.* Public notice shall be given of the intention to circulate a petition praying for the removal of the county seat of any county from its then present location to some other point within said county, and in said petition designated, at least ten days before the same is circulated, by publication in some newspaper printed in the county (if there be one), and by posting three printed notices in three public places at the county seat, and a like

number at the place to which the county seat is proposed to be removed, in which notices the intent of said petition shall be set forth; and all signers to such petition or petitions shall be void and stricken from such petition if procured six months before the first day of the term of court at which the application is to be made; and whenever such petition or petitions, addressed to the District Court of each county, and stating the time when such election shall be held, shall be signed by a number of legal voters of said county, equal in number to a majority of all votes cast at the last general election therein, and shall be filed in the office of the clerk of the District Court of said county, not less than twenty nor more than forty days before the first day of the term of said court next preceding the next general election, unless said term commences after the first day of October, then, in such case, the next preceding term. Such petition shall be deemed a proposal to remove the county seat of such county, and the point designated in said petition shall be deemed and taken as fixed by said petition, in pursuance of law, whenever the court shall order an election to such point as hereinafter provided, as the point to which it is proposed to remove the county seat of such county.

Hist. C. L. 467.

Qualification of Signers: The signers of the petition for the removal of a county seat need not be registered voters, but merely persons who are qualified to register as voters.

Wilson vs. Bartlett (1900), 7 I., 271; 62 P., 416.

Same: Determination of Qualifications: When a petition for the removal of a county seat is presented to a court and all the signers of said petition state over their signatures that they are qualified electors of such county, the petitioners make a prima facie case, and no further evidence of the qualifications of such signers is required unless a contestant appears and enters his protest.

If specifications in contestant's affidavit raise no valid objection to the qualifications of any of the signers of the petition, the court is justified in finding, without further proof, that all of the signers of said petition are qualified electors.

Wilson vs. Bartlett (1900), 7 I., 271; 62 P., 416.

This Section Not Conclusive: By the provisions of this section a petition for the removal of a county seat must be signed by a number of legal voters of such county equal in number to a majority of all votes cast at the last general election, and that provisions of the law provides a rule of evidence for establishing a prima facie case, and the court upon that showing would be justified in ordering an election unless it was shown to the court that the number of qualified electors in the county had increased since the last general election, and in that case the petition must contain a majority of the qualified voters as shown by the legal evidence produced on the hearing of such petition.

Lippincott vs. Carpenter (1912), 22 I., 675; 127 P., 557.

More Than One Application: Under the provisions of the Constitution and statute, more than one application may be made for an order of election for the removal of a county seat, and upon the hearing it is the duty of the court to consider all of such petitions at the same hearing and determine which, if either, contains a majority of the qualified electors of the county.

Lippincott vs. Carpenter (1912), 22 I., 675; 127 P., 557.

Withdrawal of Names From Petition: Withdrawals from the petition for the removal of a county seat may be made at any time prior to the submission of the petition to the court.

Lippincott vs. Carpenter (1912), 22 I., 675; 127 P., 557.

SEC. 652. *Same: How Signed.* Each petitioner signing such petition shall write, or cause to be written, opposite to his name on said petition, the name of the city and ward in which he then resides, if he resides in a city; or, if he does not reside in a city, then the name of the precinct in which he resides at the time of signing such petition; and no person shall sign such petition unless he shall be, at the time, a legal voter at general elections.

Hist. C. L. 468.

Cited: Lippincott vs. Carpenter, 22 I., 675; 127 P., 557.

SEC. 653. *Petition Open to Inspection.* Said petition or petitions shall, after they are filed in the office of the clerk of the District Court of the county, be open to the inspection of any and all citizens of the county, but shall not be removed therefrom.

Hist. C. L. 469.

Cited: Lippincott vs. Carpenter, 22 I., 675; 127 P., 557.

SEC. 654. *Contesting Right to Sign Petition.* Any citizen and legal voter at general elections in said county may contest the right of any person whose name is subscribed to said petition, to sign such petition under this chapter, and shall have the right to contest said petition as to any names subscribed thereto that he shall have good reason to believe are fictitious; *Provided*, He shall, ten days before the first day of the terms of said court file in the office of the clerk of the District Court of such county, a list of the names of the persons whose right to sign said petition he is desirous of contesting, together with his affidavit indorsed thereon, that he has good reason to believe, and does verily believe, that such persons named in said lists are not legal voters of such county and had no right in law to sign such petition; and shall also file in the office of said clerk, ten days before

said term of said court, a list of such names as he has reason to believe are fictitious, together with his affidavit, that he has good reason to believe, and does verily believe, that such names are fictitious; and such persons shall have the right to contest such petitions only as to the names included in said list.

Hist. C. L. 470.

Cited: Lippincott vs. Carpenter, 22 I., 675; 127 P., 557.

Affidavit of Contest: The affidavit of a contestant in a county seat removal case, must show that the list of names that he desires to contest, if stricken from the petition, would reduce the number of names on the petition to less than the number required by law to be on such petition; if it does not, the trial court ought to deny the contest and strike the affidavit from its files.

Wilson vs. Bartlett (1900), 7 I., 271; 62 P., 416.

SEC. 655. *Same: Procedure in Case of Contest.* It shall be the duty of said court, on the first day of and during said term of court, to hear all evidence for and against said petition or petitions as to the lists of names filed in said court under this chapter, and to strike from such petition or petitions all names proven by competent evidence to be fictitious, and the names of persons having no legal right to sign the same under this chapter. In case there shall be no contest, or if the court finds, after striking from said petition or petitions all names proven to be fictitious, and all names not legally signed thereto, that it still contains the number of names of legal voters required by this chapter, the court shall order said election according to the prayer of said petition. In case of a contest to said petition or petitions, it shall be the duty of the clerk of said court, on request of the persons contesting any petition under the provisions of this chapter, to issue subpoenas for such witnesses as said persons shall name; and it shall be the duty of said clerk, on request of any legal voter of the county for the purpose of sustaining any petition, in like manner to issue subpoenas for such witnesses as he shall name, said subpoenas to be made returnable to the term of court at which such contest will be made.

Hist. C. L. 471.

Cited: Lippincott vs. Carpenter, 22 I., 675; 127 P., 557.

SEC. 656. *Same: Contests Have precedence.* All cases of contest arising upon said petitions or affidavits shall have precedence over all other cases at said term of said court,

and shall be heard and determined at said term, and the decision of the court shall be final.

Hist. C. L. 472.

Cited: Lippincott vs. Carpenter, 22 I., 675; 127 P., 557.

Right of Appeal: This section was not intended to take away the right of appeal in proceedings of this kind, and by the language, "the decision of the court shall be final," it was intended to indicate that such decision was in harmony with Section 4807 of the Revised Statutes and appealable.

Wilson vs. Bartlett (1900), 7 I., 269; 62 P., 415.

SEC. 657. *Voting for Removal of County Seat.* The voting for the removal of any county seat shall be by ballot, and each ballot shall have printed or written thereon the words stated in Section 663. Such ballot shall be smaller than the general election ballots, and shall be officially stamped, and there shall be printed or written thereon the words, "County Seat Ballot," and any elector who is registered, as in this title provided, and who, in addition to being qualified to vote for county officers, has resided in the county six months and in the precinct ninety days, shall be permitted to vote for or against the removal of the county seat, by handing to one of the judges of election a county seat ballot, at the same time announcing that he is entitled to vote on the question of the removal of the county seat. If the judges of election are of the opinion that the said elector is entitled to vote on the question of the removal of the county seat, his ballot shall then be deposited in the ballot box, and the clerks of election shall write opposite his name in brackets the words "County Seat" or "County Division," as the case may be.

Hist. C. L. 473.

Cross Reference: Qualifications of voters at county seat elections. Const., Art. XVIII, Sec. 2.

Cited: Lippincott vs. Carpenter (1912), 22 I., 675; 127 P., 557.

SEC. 658. *Same: Challenging Voters.* Any person who offers to vote on the question of the removal of the county seat may be challenged by any person and for any of the reasons allowed for other challenges, and the rules provided for other challenges shall apply to such challenges.

Hist. C. L. 474.

Cited: Lippincott vs. Carpenter (1912), 22 I., 675; 127 P., 557.

SEC. 659. *Canvass of Returns.* The returns for county seat elections shall be canvassed by the same officers and in the same manner as the returns for county and precinct

officers are canvassed, and the result of the vote for the removal of the county seat shall be officially declared by the county board of canvassers in the following manner:

They shall record the total votes cast in each ward or precinct both for and against the proposed removal, upon the book provided for recording the results of the general election. This record shall be made upon a separate page, or pages, of said book, and after the record is complete and the total result known, they shall make a complete copy of such record, certified to by each member of the board. They shall deposit this certificate with the county auditor, who shall, without delay, file the same with the clerk of the District Court which authorized the election, and the auditor shall also cause a copy of the certificate to be published in some newspaper of general circulation in the county.

Hist. C. L. 475.

Cited: Lippincott vs. Carpenter (1912), 22 I., 675; 127 P., 557.

SEC. 660. *Same: Result of Vote.* When the attempt has been made to remove the county seat of any county, as in this chapter provided, and the county board of canvassers have found and declared that two-thirds of the voters of the county who have voted for or against such removal have voted in favor of such removal, then said county seat of said county is thereby removed to the point named in the petition.

Hist. C. L. 476.

Cross Reference: Two-thirds affirmative vote required. Const., Art. XVIII., Sec. 2.

Cited: Lippincott vs. Carpenter (1912), 22 I., 675; 127 P., 557.

SEC. 661. *Changing County Boundaries.* Whenever the Legislature has enacted that a part of any county be stricken off from any county, and annexed to an adjoining county, the provisions of the Constitution being complied with, the qualified electors who have resided ninety days next preceding the first general election after the passage of this chapter within the boundary lines of the territory stricken off and annexed, shall be permitted to vote at said general election, for or against said annexation. If a majority of said electors voting at said election vote in favor of annexation, said territory is then stricken off and annexed, as provided in this chapter; *Provided*, That all the requirements of the Constitution have been complied with.

Hist. C. L. 477.

Cross Reference: Constitutional requirements, Art. XVIII, Secs. 3, 4.

Cited: Lippincott vs. Carpenter (1912), 22 I., 675; 127 P., 557.

SEC. 662. *Conduct of Election.* The rules and regulations for voting at county seat elections, as provided in this chapter, so far as they apply to ballots, voting, challenging, canvassing the returns and declaring the result, shall apply to elections for the striking off of any part of any county and annexing the same to any adjoining county.

Hist. C. L. 478.

Cited: Lippincott vs. Carpenter (1912), 22 I., 675; 127 P., 557.

SEC. 663. *Form of Ballot.* It shall be the duty of the auditor of the county wherein it is proposed to hold an election for the removal of the county seat, or changing county lines, to cause to be printed separate ballots at the same time and in the same manner as ballots for the general election are printed.

Such separate ballots shall be three inches square, or as near this size as practicable, and on one side there shall be printed the following words:

For removal of the county	}	No.
seat to.....		Yes.

For changing county lines	}	No.
		Yes.

(As the case may be).

And the auditor shall send an equal number of these special ballots, with the ballots furnished for the general election, to each voting precinct of the county and at the same time.

Hist. C. L. 479.

Cited: Lippincott vs. Carpenter (1912), 22 I., 675; 127 P., 557. Whitla vs. Quarles (1908), 15 I., 604, 98 P., 631.

Not Effected by General Election Statute: This statute is still in force and effect in reference to the size, form and manner of preparation of ballots for county seat removals. Whitla vs. Quarles (1908), 15 I., 604, 98 P., 631.

CHAPTER XV.

COMPILED STATUTES, CH. 38.

SPECIAL ELECTIONS.

SEC. 664. *Conduct of Special Elections.* Special elections shall be conducted and the results thereof canvassed and

certified in all respects, as near as practicable, in like manner as general elections, except as otherwise provided; but special elections shall not be held, unless when required by public good, and in no case within ninety days next preceding a general election.

Hist. C. L. 480.

Cross Reference: Special elections to fill vacancies in the Legislature, Sec. 462. In office of Representative in Congress, Sec. 463 and 464. County bond elections, Secs. 3527-3531 inc., C. S.

SEC. 665. *Meeting of Canvassing Board.* In all cases where special elections are to be held to fill vacancies in offices, the board of canvassers shall meet at twelve o'clock noon on the third day after such election, to canvass the votes cast at such election, and the county auditor, within four days after any special election for a member of the Legislature, or Representative in Congress, shall transmit to the Secretary of State an abstract of the votes cast at said election, if there be more than one county in the district.

Hist. C. L. 481.

SEC. 666. *Same: Time of Meeting.* Within ten days after said election in the case last mentioned, the board of state canvassers shall meet and canvass the votes cast to fill such vacancy, and if the returns have not been received from all the counties composing said district, they may adjourn to such day as they deem necessary, not exceeding five days, for the purpose of receiving said returns.

Hist. C. L. 482.

SEC. 667. *General Election Law Applicable.* The provisions relating to general elections shall govern special elections, except where otherwise provided for.

Hist: C. L. 483.

Cited: Gillesby vs. Comrs. of Canyon County (1910), 17 I., 586; 107 P., 71; Ann. Cas., 1913B, 17, 23, 24; 1916D, 62.

SEC. 668. *Notice of Special Election.* Whenever a special election is ordered by the board of commissioners, notice must be issued and posted in the same manner as for a general election.

Hist. C. L. 484.

CHAPTER XVI.

COMPILED STATUTES, CH. 23.

RESIGNATIONS AND VACANCIES.

SEC. 642. *Vacancy in Legislative Office: Special Election.* When a vacancy occurs in the office of a member of the Legislature, and the body in which such vacancy exists is in session, or will convene prior to the next general election, the Governor shall order a special election to fill such vacancy at the earliest practicable time, and ten days' notice of such election shall be given.

Hist. C. L. 325.

Cross Reference: Conduct of Special Elections, Secs. 664-668 C. S.

SEC. 463. *Vacancy: U. S. Senator.* That whenever any vacancy shall occur in the office of United States Senator from the State of Idaho by death, resignation or otherwise, the Governor shall have the power and is hereby authorized and empowered to fill such vacancy by appointment, and the person so appointed shall hold such office until such time as a United States Senator is regularly elected to fill such vacancy, at the next succeeding general election, and qualifies by virtue of such election: *Provided, however,* That in case a vacancy occurs in the position of United States Senator from the State of Idaho within thirty days of any general election, no election for United States Senator to fill vacancy shall be held at such general election.

Hist. C. L. 325a. Laws 1917, Ch. 27, Sec. 1.

SEC. 464. *Same: Representative in Congress.* Whenever any vacancy shall occur in the office of Representative in Congress from the State, it shall be the duty of the Governor to appoint a day to hold a special election to fill such vacancy, and cause notice of such election to be given as required in Section 499 and 500 of these Codes.

Hist. C. L. 326.

CHAPTER XVII.

COMPILED STATUTES, CH. 150, ART. 3.

ERECTION OF PUBLIC BUILDINGS.

SEC. 3464. *Erection of Court House: Bond Election.* Whenever the interests of any county require it, and the Board of Commissioners of the county deem it for the pub-

lic good to purchase a site and erect thereon a court house and jail, or either thereof, and furnish the same; and the expense of purchasing such site, or erecting such buildings of suitable size and capacity and furnishing the same would exceed the revenue of one year applicable to that purpose, and the board deems it for the public good to bond the county for the purpose of providing funds therefor, the Board of Commissioners may, by a resolution adopted at a regular or any special meeting called for that purpose, call a special election for such purpose, or submit, at any general election, the question of issuing negotiable coupon bonds to an amount deemed necessary to defray the expenses of purchasing such site and erecting and furnishing such buildings.

Hist. C. L. 1932.

Cited: Bannock County vs. Bunting (1894), 4 I., 156; 37 P., 277; McNutt vs. Lemhi County (1906), 12 I., 63; 84 P., 1054.

Cross Reference: City and County Buildings: Secs. 3467 to 3469; Laws '19, Ch. 126, p. 411.

Construction with Constitution: Under the provisions of this section a bridge cannot be built at a cost exceeding \$1,000.00 unless one-third of the taxpayers who are voters petition therefor, but since the adoption of the Constitution this provision has been changed and only applies when the revenue for the fiscal year is not exceeded, for if such cost exceeds the revenue for the fiscal year, the bridge cannot be built without a two-thirds vote. Dunbar vs. Board of County Commissioners (1897), 5 I., 407; 49 P., 409.

Advertisement for Bids: In the matter of advertising for bids and letting contracts for public buildings or improvements, the provisions of this section must be substantially followed, and before a Board of County Commissioners can legally advertise for competitive bids for the erection of a bridge, they must adopt plans and specifications of such bridge. Any contract made without adopting such specifications, or made when the specifications have been adopted after publication of the notice is void. Andrews vs. Board of Commissioners (1900), 7 I., 453; 63 P., 592.

Successful Bidders: The contract must be let to the lowest responsible bidder. Andrews vs. Board of Commissioners (1900), 7 I., 453; 63 P., 592.

SEC. 3465. *Purchase of Site and Letting of Contract.* If two-thirds of the qualified electors of the county voting at such election, vote in favor of the issuance of the bonds, the Board of Commissioners shall select and purchase, or, if necessary, cause to be condemned, for the use of the county, a suitable site for said buildings, and cause to be prepared plans and specifications for such court house and jail, or either thereof as the case may be, and advertise in a weekly newspaper of the county for thirty days calling for sealed

proposals or bids for the construction of said buildings. The published notice shall contain a general statement of the character and limited cost of the building or buildings, and state that the plans and specifications thereof may be found and examined in the office of the clerk of the board, and state the day when the sealed proposals will be opened and considered. The sealed proposals must be opened and considered publicly, and the contract let to the lowest responsible bidder, unless all bids are rejected; and if all bids are rejected, the board may advertise for new bids, or let the contract, provided it be for a less sum than that offered to the lowest bidder. The board must require a good and sufficient bond of the contractor conditioned for the faithful performance of the contract according to the plans and specifications. The board shall have full power and authority to do and perform any act in relation to purchasing such site and erecting said buildings, at any special or called meeting when all members of the board are present, or at any regular meeting of the board.

Hist. C. L. 1933.

SEC. 3466. *Statutes Governing Election and Bond Issue.* The board shall be governed in calling and holding said election, and in the issuance and sale of said bonds, and in providing for the payment of the interest thereon, and for their redemption, by the provisions of Sections 3519 to 3531, inclusive, of these Codes.

Hist. C. L. 1934.

SEC. 3467. Any county and a city of the first class, or a city acting under special charter, situated within such county, and being the county seat thereof, are hereby authorized and empowered to acquire and own a site or sites within the limits of such city and jointly to construct public buildings thereon, to be jointly owned and used by such county and city; or one of such municipalities may purchase an interest in a site already owned by the other and they may then jointly construct public buildings thereon.

Hist. Laws '19, Ch. 126, p. 411.

SEC. 3468. That the Board of County Commissioners of such county and the city council or other governing body of such city, are hereby authorized and empowered to enter into all necessary contracts or agreements with respect thereto and also all necessary contracts and agreements as

between such county and city for apportioning the expenses of acquiring such site and constructing such buildings and for the maintenance, operation and use thereof, and may from time to time modify or change such agreements as they may deem best.

Hist. Laws '19, Ch. 126 p. 411.

SEC. 3469. Counties and cities operating under this act, are hereby authorized and empowered to incur indebtedness and issue bonds for any of the purposes authorized hereby in the same manner in which they are now or hereafter may be authorized by law to incur indebtedness and issue bonds for similar purposes.

Hist. Laws '19, Ch. 126, p. 411.

CHAPTER XVIII.

COMPILED STATUTES, CH. 150, ART. 8.

COUNTY BOND ISSUES.

SEC. 3527. *Notice of Bond Election.* If the question of bonding the county as herein provided, is to be submitted to the voters of the county at a special election held for that purpose, the board shall cause printed or written notices of the intention to hold such an election to be posted in two or more conspicuous places in each precinct of the county, and shall also cause a printed notice of the intention to hold such an election to be published in one or more newspapers of the county, if any newspapers are printed therein. The said notices shall recite the action of the board in deciding to bond the county, the purpose thereof, and the amount of the bonds that are to be issued, and shall also specify the day of the election, the time during which the polls shall be open, which shall not be less than six hours; the notices posted in each of the several precincts shall also name the place of holding such election. The notices herein provided for shall be posted, or posted and published, at least twenty days before such election. Every person over the age of twenty-one years, who is a citizen of the United States, and shall have resided in the State six months, and in the county thirty days immediately preceding the election at which he offers to vote, shall be entitled to vote at such election.

Hist. C. L. 1968. Laws 1909, page 189.

Recitals of Notice: It is not necessary to specify in the notice of a county bond election the particular roads and bridges which are to be built or repaired by the proceeds realized from the sale of the bonds.

Independent Highway District vs. Ada County (1913), 24 I., 416; 134 P., 542.

Cited: (On rehearing) Gilbert vs. Canyon Co. (1908), 14 I., 437; 94 P., 1029.

SEC. 3528. *Conduct of Election: Application of Election Law.* Such election shall be held in all respects in conformity with the general election laws so far as the same may be applicable, except as herein provided, but all that part of the general election law relative to the apportionment of registrars and the registration of voters, the appointment of judges and clerks, and the establishment of voting booths and printing of an official ballot, and providing for an official stamp, and method of voting as provided in Sections 591, 592 and 593 of the General Election Laws, shall not apply.

Hist. C. L. 1968.

SEC. 3529. *Officers of Election: Canvass of Returns.* The board of county commissioners shall appoint two judges and one clerk of election in each precinct, for the purpose of holding such election, and upon the failure of either to act, the electors present at the opening of the polls may fill vacancies. Such judges and clerk conducting such election shall make return of such election to the board of county commissioners, within three days after such election is held. The returns of bond elections shall be canvassed in the same manner as the returns for election of county and precinct officers are canvassed, and the result of the vote shall be officially declared by the county board of canvassers in the following manner. They shall record the total vote cast in each precinct for and against the proposed issue of bonds, in the book provided for recording the results of the general election, and shall make a complete copy of such record, duly certified to them, and shall deposit the same with the auditor of the county.

Hist. C. L. 1970.

Cited: Bryan vs. Montandon (1898), 6 I., 352; 55 P., 650.

SEC. 3530. *Form of Ballot.* Such election shall be by ballot. The ballot shall be of white paper, three inches square, and shall contain the words "Bond. Yes." "Bond. No." and shall have printed at the top the following instruction: "If the voter desires to vote for the issue of bonds, he shall strike out the word 'No.' If he desires to vote against the issue, he shall strike out the word 'Yes.'" The

auditor of the county shall cause the ballots to be printed and distributed, and shall send a sufficient number to the judges appointed in the several precincts.

Hist. C. L. 1971.

SEC. 3531. *Voting on Bonds at General Election.* The special election herein provided for, may be held at the same time and place at which the general election is held, and the officers at the general election in each precinct may serve as officers of the special election, but the notices of the election must be given, and the ticket printed and distributed as herein prescribed; the ticket when voted, shall be deposited in a separate box provided for its reception; the return of the vote by the judges of election shall be on a separate sheet from the return of the general election, and shall be canvassed as hereinbefore provided for.

ARTICLE 9.

County Road Bonds: Partly Payable by Special Assessments.

Cross Reference: Similar provisions are found in the highway district law: 1557-1567.

SEC. 3532. *Assessment against adjoining property: Special tax districts.* Whenever it shall be proposed to issue bonds of a county for road purposes, as authorized by law, the Board of Commissioners for such county may, in their discretion, propose by resolution that the revenues to be raised by taxation to enable such county to pay the principal and interest of such bonds shall be raised in part by special taxation therefor upon the land adjoining the roads constructed with the proceeds of such bonds, and may pass a resolution which shall provide as follows:

(1) That it is proposed that the revenues to be raised by taxation to enable such county to pay the principal and interest of such bonds shall be raised in part by special taxation therefor upon the lands adjoining the roads constructed with the proceeds of such bonds; and that, of the entire bond issue (stating the amount), it is proposed to provide for a portion not exceeding certain amount (stating such maximum amount in dollars) by special taxation therefor upon adjoining land.

(2) That, for such purpose, special tax districts shall be created along the line of construction of such roads, extending not more than a specified distance (which shall not be

greater than one (1) mile, on each side of such roads; that so nearly as may be practicable such special tax districts shall be generally rectangular in form, or composed of generally rectangular units, following generally the course and direction of the road and observing, so far as is reasonably practicable, the requirement and principle that all the land within any special tax district shall be land lying generally along the course and direction of such road and extending within the limits of a specified distance back therefrom, but that absolute uniformity shall not be required in the application of such requirement and principle; that such specified maximum distance shall be the same in all the special tax districts created in respect to such bond issue; that the aforesaid maximum distance from the road may be enlarged in any special tax district in case any of the land lying between the road and the boundary of such district would, if confined within such distance, be made to include land under water or land not subject to taxation by counties, or land unfit for use and cultivation and not having value sufficient to justify the imposition of special taxation thereon, and that, in such case, land lying beyond such land may be included within such special tax district in lieu thereof; and that the judgment of the Board of Commissioners as to all the matters herein specified shall be made in the exercise of their taxing power as an executive authority, and shall be conclusive, except as the same may be reviewed by the District Court as provided in Section 3537.

(3) That the land within such special tax districts shall be charged with not more than a certain maximum percentage, specified in the resolution (but not exceeding fifty (50) per cent), of the cost of that part of every road constructed with the proceeds of such bond issue which shall lie within such special tax districts, respectively; and that the amount of such special tax therefore per acre shall not exceed a certain specified amount of any single earth road, nor a certain specified amount for any single stone road, nor a certain specified amount for any single road of other material, together with the yearly interest thereon; except that, if it is not proposed to build earth roads, the reference to earth roads shall be omitted; if it is not proposed to build stone roads, the reference to stone roads shall be omitted; and if it is not proposed to build roads of other material, the reference to roads of other material shall be omitted.

(4) That such special tax against land within such special tax districts shall in no case be levied or charged against such land until the road for which such special tax is imposed, shall have been constructed to within one (1) mile of such land, the cost thereto certified and the road accepted by the Board of Commissioners.

(5) That so much of such special tax as is required to pay the interest on the portion of the bonded debt for which the land within any such special tax district is specially taxed shall be payable in each year, and that so much of such special tax as is required to pay the principal of the portion of the bonded debt for which such land is specially taxed shall be payable at the same times as the general taxes levied in the county to provide for the principal of such bonds, and shall be extended over the same number of years and subject to the same provisions in respect to funding and refunding, except as in this Chapter otherwise provided.

(6) That all land within such special tax districts shall also be subject to the same taxation at the same rate as other property in the county for the purpose of meeting the principal and interest requirements of that portion of such bond issue which is not charged against adjoining property but is paid by the county as a whole.

All the provisions of such resolution shall be observed and followed in the issuance of such bonds and in all acts and proceedings of the county or Board of Commissioners in respect thereto. The provisions of Section 3519 to 3531 inclusive, of the Compiled Statutes, except so far as other special provision is made therefor in Sections 3532 to 3542, inclusive, of this Chapter, shall apply in respect to the bonds issued as provided in this section and to the procedure thereon.

Hist. C. L. 1972a. Laws 1911, page 588.

SEC. 3533. *Election Ballots.* At the election upon the question of issuing such bonds, the ballots shall be in substantially the following form:

"In favor of issuing bonds to the amount of..... Dollars for the purpose stated in Resolution of..... 19....."; and "Against issuing bonds to the amount of..... Dollars for the purpose stated in Resolution of....., 19....."; and "Shall a portion of the

indebtedness created by such bond issue, not exceeding _____ Dollars, thereof, be charged against the land adjoining the roads built with the proceeds of such bonds, such portion to be paid by special tax on such adjoining land, running over the same number of years as the bonds themselves; such special tax not to exceed (exclusive of interest) for a single road _____ Dollars per acre for earth roads, _____ Dollars per acre for stone roads or _____ Dollars per acre for roads of other materials, and not to be levied or assessed against such adjoining lands until such roads have been built to within one (1) mile thereof? Yes. No."

The blanks in such ballots shall be properly filled before printing the same, in accordance with the resolution of the Board of Commissioners provided for in Section 3532; except that if it is not proposed to build earth roads, the reference to earth roads shall be omitted; if it is not proposed to build stone roads, the reference to stone roads shall be omitted; and if it is not proposed to build roads of other materials, the reference to roads of other materials shall be omitted.

Hist. C. L. 1972b. Laws 1911, page 590.

SEC. 3534. *Same: Two-Thirds Vote Necessary.* In order to authorize the issue of any bonds under the resolution provided for in Section 3532 hereof, at least two-thirds of the ballots voted at such election whereon the elector has voted on the question of issuing bonds, must be in favor thereof; and in order that a portion of the indebtedness to be created by such bond issue shall be charged and assessed against adjoining land within the special tax districts, at least a majority of the ballots voted at such election whereon the voter has voted on the question of charging portion of the indebtedness against adjoining land must be in favor thereof; but the defeat of the latter proposal shall not have the effect of defeating the proposal to issue bonds if the proposal to issue bonds has itself been carried by a two-thirds vote. If the proposal to issue bonds be carried as above provided and the proposal to charge part of the indebtedness upon adjoining land be defeated, then the bonds may be issued, and, in such case, all proceedings had in respect thereto shall be conducted as in Sections 3519 to 3531, inclusive, Compiled Statutes, except as the proceedings to

that point may have been modified as in Sections 3532, 3533, and 3534 of this Chapter provided, and thereafter, Sections 3535 to 3542, inclusive, of this Chapter shall not be applicable in respect to such bond issue. But, if the proposal to charge part of the indebtedness created by such bond issue against adjoining land be also carried as herein provided, then Sections 3535 to 3542 hereof, inclusive, shall be applicable in respect to the proceedings had on such bond issue.

Hist. C. L. 1972c. Laws 1911, page 591.

SEC. 3535. *Form of Bonds.* In case such vote be in favor of charging part of the indebtedness to be created by such bond issue against adjoining land, the bonds may be issued and the proceedings shall be had thereunder (except as to the form of ballots) as in Sections 3519 to 3531, inclusive, of the Compiled Statutes, provided, except where other special provisions of the subject are made in Sections 3535 to 3545, inclusive, of this Chapter. All such bonds shall be as between the county and the bondholders the direct and primary obligation of the county for the full amount of the principal and interest thereof; but the county shall, as between the county and the owners of lands within the special tax districts herein provided for, assess and collect from such lands or the owners thereof an amount of money sufficient to reimburse the county to the extent of the proportion of such bonded debt that has been charged against the lands in such special tax districts as herein provided.

Hist. C. L. 1972d. Laws 1911, page 591.

SEC. 3536. *Special Tax Districts: Apportionment of Costs.* As fast as any road built with the proceeds of such bond issue is built and completed within an area of land which, under the resolution of the Board of Commissioners provided for in Section 3532 hereof, may be created a special tax district, and when such road has been accepted by the Board of Commissioners and the Board of Commissioners have certified to the cost of such road so far as such road lies within such special tax district, then the Board of Commissioners shall, by order, create such special tax district and shall fix and designate the boundaries thereof in conformity with the requirements and principles specified in Section 3532 hereof, and shall designate the portion of

the cost of such road to be charged against the land in such special tax district, not exceeding the maximum percentage specified in their original resolution, and shall thereupon fix and determine the amount per acre thereby charged against such lands within such special tax district, not exceeding, in respect to any single road, the maximum amount per acre specified for a road of that material in the original resolution; such amount per acre need not be the precise proportionate cost of such road but may be the approximate proportion, avoiding inconvenient fractions or fractional parts of a dollar, and shall be the same uniform amount per acre throughout any single special tax district. The Board of Commissioners shall include as part of the cost of such road the fair and reasonable portion of overhead charges properly applicable thereto. From time to time, as roads or portions of roads are completed and accepted and the cost thereof certified, the Board of Commissioners shall create the proper tax districts therefor. In respect to each such special tax district created under this Chapter, the Board of Commissioners is hereby constituted the local executive authority of each such special tax district, severally, with authority in respect to each such district to levy the special tax herein provided for, such authority being confined in each such district to the limits of such district, and within such limits, the special tax in each such special tax district shall be at a uniform amount per acre throughout such special tax district. The order of the Board of Commissioners creating such special tax district and fixing and determining its boundaries, stating the number of acres therein, fixing the amount of the indebtedness created by such bond issue which is charged against the land in such special tax district and the amount per acre to be specially taxed against the land therein, shall be entered at length on the minutes of the Board of Commissioners and shall be open to public inspection, and a notice stating generally the nature and date of such order and designating the townships and sections within such special tax district shall be published for at least two (2) publications in a newspaper published in the county; and, on the filing with the clerk of the Board of Commissioners of proof of such publication, such order shall be deemed complete, and the making of such order and

the publication of such notice shall be deemed notice to all the word thereof.

Hist. C. L. 1972e. Laws 1911, page 592.

SEC. 3537. *Appeal From Order of Board.* Within thirty days after such filing, but not after the expiration of such thirty days, any owner of land within such special taxing district may file in the office of the clerk of the Board of Commissioners a copy of a verified petition in a proceeding in the District Court of the district for the review of such order, specifying the grounds of objection thereto. At the expiration of such thirty days, all such proceedings relating to the same special tax district wherein copies of petitions for review have been duly filed shall be consolidated by order of the District Court into a single proceeding, and such notice shall be given and such procedure followed therein as the District Court shall prescribe; and such District Court shall have jurisdiction as a court of equity and without a jury to try and determine such proceeding; on such review, the only question to be tried and determined shall be whether, in creating such special tax district and in fixing the amounts so charged against the land therein, the Board of Commissioners have observed the requirements and principles specified in Section 3532 hereof, and the District Court shall, if it determine that the Board of Commissioners have materially departed from such requirements, and principles, make a final order in such proceeding directing any necessary change or modification in the order of the Board of Commissioners, and the Board of Commissioners shall thereupon make such changes and modifications in their order, and the changed or modified order shall be submitted to the District Court and finally made as directed and approved by such court; if in such proceeding, the District Court shall determine that the Board of Commissioners have not materially departed from the said requirements and principles, it shall affirm the order of such board. On the expiration of thirty (30) days from the date of the Board of Commissioners' original order without any copy of a petition for review having been filed as herein provided, or on the filing with the clerk of the Board of Commissioners of the order of the District Court in the proceeding for review affirming such order, or on the filing with such clerk of the new order of the Board of Commissioners embodying

the changes and modifications directed by the District Court in such proceeding for review, with the written approval of the court subjoined thereto, as the case may be, such order shall be final and conclusive against all the world in respect to all the matters and things therein contained.

Hist. C. L. 1972f. Laws 1911, page 593.

SEC. 3538. *Levy of Taxes in Special Tax Districts.* When such orders of the Board of Commissioners has become final and conclusive, as in Section 3537 hereof provided, the Board of Commissioners shall thereupon levy upon all the land within the special tax district created by such order a special tax equal in amount to the amount so charged in such order against such special tax district, specifying the amount per acre thereof, and the clerk of the Board of Commissioners shall thereupon transmit to the assessor and tax collector of the county a certified copy of such levy and of the order creating such district, and, on receiving the same, the county assessor shall thereupon assess against the land in such special tax district the amount so levied; but the same shall not be collected except as installments thereon shall thereafter be called for by the annual levies made by the Board of Commissioners of the taxes necessary to meet the requirements of such bonds. The existence of such assessment against land in the special tax districts shall not be held to constitute a cloud upon the title thereof, nor as a breach of a covenant of warranty, nor of the covenant of title, nor of a covenant against encumbrances in a deed or contract for such land, nor as rendering the title to such land unmarketable. The special tax herein authorized within such special tax districts is a tax for the purpose of securing for such special tax districts the benefit of local roads within the limits thereof, as distinguished from the general purpose of the bond issue as a whole of securing the benefit of a system of the roads for the country at large.

Hist. C. L. 1972g. Laws 1911, page 594.

SEC. 3539. *Limitation on Tax.* No special tax or charge shall be made by the county against land within a special tax district until the road has been completed to within at least one (1) mile of all the land within such special tax district and the road has been accepted by the Board of Commissioners and the cost thereof certified and all the proceedings taken thereon as herein specified; and all interest pay-

able on the bonds up to that time shall be paid by the county without imposing on such special tax district a special tax therefor other than its share in the taxation of the county as a whole; but, after such special tax has been levied as in Section 3538 hereof provided, the Board of Commissioners shall, in each year, at the same time that they levy the tax to meet the interest requirements of such bonds, levy also a special tax on the lands within every such special tax district then created sufficient in amount to pay the interest for that year on the portion of such bond issue the indebtedness whereof shall have been charged against such special tax district as herein provided; and whenever the Board of Commissioners shall levy a tax to meet any principal or sinking fund requirements of such bonds, they shall, at the same time, levy also a special tax on the land within every such special tax district then created sufficient in amount to pay the principal or sinking fund requirements for that year on the portion of such bond issue, the indebtedness whereof shall have been charged against such special tax district as herein provided. All such special taxation within any single special tax district shall be of a uniform amount per acre within such special tax district. Each installment of principal or sinking fund taxation collected from any land within a special tax district shall be credited on the original assessment of special tax made thereon as in Section 3538 hereof provided, and when all such installments shall have been paid, such special assessment shall be deemed cancelled, paid and discharged. No special tax district, nor any land therein, shall ever be called upon to pay as such special taxes any sum greater than the amount charged against such district or such land in such original special assessment, and its proportionate share of interest thereon. In making the levy for the requirements of such bonds, the Board of Commissioners shall levy on the county at large only such amount of taxes in each year as shall be required to meet the requirements for that year of that portion of the bond issue which has not been charged against the special tax districts; but should such levy, together with the levies on the special tax districts in any year, fail to produce sufficient funds to meet the obligation of the county on the whole issue, then such deficiency shall be paid out of the other revenues of the

county and, if necessary, the bond levy shall be increased in the following year to make good such deficiency; and no failure or delay on the part of the county in imposing, levying or collecting the special taxes herein provided for shall, as between the county and the bondholders, impair the obligation of the county upon the whole of such bonds.

Hist. C. L. 1972h. Laws 1911, page 594.

SEC. 3540. *Collection of Texas in Special Tax District.* The land within each special tax district is hereby charged with a lien in favor of the county to the extent of the entire amount of all special taxes levied on the land within such special tax district in accordance with the provisions of this Chapter. The amounts so levied, both as to principal and interest shall be assessed and collected by the tax collector as other taxes in the county are assessed and collected, and all the general provisions of law shall apply to the collection thereof and the rights and remedies in respect thereto. Such portions of the amount of any bond issues of any county shall, in accordance with the provisions of Section 3538 hereof have been assessed and charged against land within special tax districts shall be deducted and excluded in computing and bond limit of the county that may be imposed by law.

Hist. C. L. 1972i. Laws 1911, page 596.

SEC. 3541. *Levies for Bonds.* Should any bond issue, whereof the indebtedness has been charged in part against adjoining property as hereby provided, be funded or refunded, so that a sinking fund for the original issue is not required to be established, then the annual levy for sinking fund requirements need not be made upon the land in the special tax districts created in respect to such bond issue; or, at the option of the Board of Commissioners, a portion of such bond issue, to meet which a sufficient amount has been charged against such special tax district may remain without refunding and shall thereafter be paid and retired with the proceeds of the special taxes on the land within such special tax districts, and if such proceeds prove temporarily insufficient therefor, then from the other revenues of the county. If the whole of an issue be refunded and new bonds issued therefor, then the land within such special tax districts shall continue to be specially taxed for its portion of the new bonds, equal in amount to its portion of the

refunded issue, *pari passu* both as to principal and interest with the taxation of the county at large for such bond purposes; *Provided, That*, on the funding of any issue of bonds issued as provided in Section 3532, then, on receiving from the county treasurer of the county a certificate, under the seal of the county, signed by the county treasurer and either by the chairman or by the other members of the Board of Commissioners that such bonds have been actually funded and retired, the special assessments made against the land within the special tax districts created for such bond issue as provided in Section 3538 shall be cancelled, vacated and annulled and a new special levy of the same amount shall be assessed against the land in such special tax districts in respect to the new or refunding bonds.

Hist. C. L. 1972j. Laws 1911, page 596.

SEC. 3542. *Liability of Special Tax Districts for General Taxes.* All land within such special tax districts shall also be subject to the same taxation at the same rate as other property in the county for the purpose of meeting the principal and interest requirements of that portion of such bond issue which is not charged against adjoining property but is paid by the county as a whole; it being the intent of this Chapter that all bonds issued by a county as provided in Section 3532, shall, as to a specified portion of the indebtedness thereby created, not exceeding fifty (50) per cent, be met and paid by special taxation upon the land adjoining the roads built with the proceeds of such bonds, not exceeding a specified sum per acre, and as the remaining portion thereof, shall be met and paid by taxation of all property in the county, including the property within such special tax districts, and including all property within any incorporated cities (whether incorporated under general or special Act), towns and villages included within the limits of such county.

Hist. C. L. 1972k. Laws 1911, page 597.

CHAPTER XIX.

COMPILED STATUTES, CH. 164.

MUNICIPAL ELECTIONS.

SEC. 4029. *Time for Holding Elections.* On the fourth Tuesday of April, 1915, and biennially thereafter, an election shall be held in each city and village governed by this title, for officers as in this title provided. All of such offi-

cers shall be elected and hold their respective offices for a term of two years, and until their successors are elected and qualified. At said election the qualified voters of such city may cast their ballots between the hours of nine o'clock a. m. and seven o'clock p. m.

Hist. C. L. 2245. Laws 1913, page 423.

Cited: Vineyard vs. City Council (1908), 15 L., 436; 98 P. 422.

SEC. 4030. *Notice of Election.* The board of trustees shall give public notice of the time and place of holding each election; said notice to be given not less than ten nor more than twenty days previous to the election.

Hist. C. L. 2246.

SEC. 4031. *Filling Vacancies Among Judges and Clerks.* If, on any day appointed for holding any election under the provisions of this title, any of the judges or clerks of election shall fail to attend, the electors present may fill such vacancies from among the qualified electors present.

Hist. C. L. 2247.

SEC. 4032. *Qualifications of Electors.* All qualified electors of this State who shall have resided within the limits of any city of the second class, or village, for three months preceding any election therein, shall be entitled to vote at all city and village elections, provided such elector is registered as provided by law.

Hist. C. L. 2248. Laws 1913, page 425.

SEC. 4033. *City Clerk is Registrar.* The city or village clerk of every city or village in the State of Idaho shall be the registrar for the registration of voters in such city or village, who shall perform the same duties in the capacity as registrar, as nearly as may be, as are required of registrars of election for State and county elections under the general laws of the State.

Hist. C. L. 2249. Laws 1913, page 426. •

SEC. 4034. *Registration Books and Elector's Oaths.* The city or village clerk, as the case may be, shall provide, at the expense of the city or village, registration books, blank elector's oaths, and all other election supplies of every kind, in form similar to those used for county and State registrations, and elections with such changes and substitutions made therein as may be necessary to carry out the provisions of this chapter.

Hist. C. L. 2250. Laws 1913, page 426.

SEC. 4035. *Time of Registration.* The city or village clerk,

as the case may be, shall register electors for city or village elections at any time during office hours, the same as is provided by law for registration for State and county elections. The city or village clerk, as the case may be, in addition to other duties required of him, shall perform all the corresponding duties in connection with the city or village elections and registrations as are required by law to be performed by the clerk of the District Court for state and county registrations for elections.

Hist. C. L. 2251. Laws 1913, page 426.

SEC. 4036. *Assistant and Deputy Registrars: Compensation.* There shall be no charge by the city or village clerk, or any of their deputies for the registration of any elector; the city or village clerk shall perform the duties imposed upon him by law with reference to the registration of electors and conduct of elections without extra compensation outside of his salary therefor; *Provided, however,* That for the purpose of compiling the lists of voters for voting precincts or wards, just prior to any election, the city or village council or board of trustees, as the case may be, may, in its discretion, employ assistance for the village clerk to perform such duty. *Provided, further,* That whenever the necessity therefor shall exist in any city or village the city council, or board of trustees, as the case may be, may, in its discretion, appoint sufficient deputy registrars to assist the city or village clerk, as the case may be, in the registration of the electors of such city or village, but there shall be no more deputy registrars appointed in any city or village than there are wards, or voting precincts, situated therein, and each deputy registrar so appointed shall have the right to perform his duties as registrar in any portion of the city or village, as the case may be. Such deputy registrars shall be appointed not more than thirty days immediately preceding any city or village election. The compensation to be paid any person, or persons, for duties to be performed, or services rendered under the provisions of this section, shall be paid as other current expenses of the city or village are paid, and no larger or greater sum shall be paid therefor than as authorized for the payment of similar services under the general registration laws of the state.

Hist. C. L. 2252. Laws 1913, page 426.

SEC. 4037. *Not Applicable to Cities With Special Char-*

ters. The provisions of this chapter shall not apply to cities having special charters, which provide for registration.

Hist. C. L. 2253. Laws 1915, page 20.

SEC. 4038. *Certificates of Election.* Certificates of election for all officers of cities and villages shall be made out, under the corporate seal, by the city council or board of trustees, at their first meeting after any election of such officers.

Hist. C. L. 2254.

SEC. 4039. *Application of General Election Law.* All elections held in villages or cities as provided for in this title shall be conducted in the manner and form as provided by the general election laws of the State, for State and county registrations and elections, with the necessary changes and substitutions, except as herein otherwise provided; and all matters and things with reference to the registration of voters not specifically provided for in this chapter shall be done in accordance with the general laws of the State for State and county elections, the necessary substitutions and changes being made.

The city or village clerk, as the case may be, shall, from the registration lists showing the voters registered and voting at the biennial election held in April, 1913, prepare such lists of voters for such city or village as are required, under the general registration and election laws of the State, to be prepared and kept by the clerk of the District Court for State and county registrations of voters and elections; and when said lists are so prepared by the city or village clerk, the city or village clerk shall perform the same duty with reference to keeping said lists up to date, as is required of the clerk of the District Court under the general registration, and election laws of the State, in case of registration of voters for the State and county elections.

It shall not be necessary for any voter who is registered and votes at the biennial city or village election held in April, 1913, in any city or village in the State, except as herein otherwise provided, to register in order to vote at any succeeding general or special city or village election, hold in such city or village so long as such elector continues to vote at each biennial election, held after the biennial election held in April, 1913, for the election of city or village

officials; *Provided*, That such elector has continued to live in the same city, ward or precinct or has properly transferred from such city or village, ward or precinct to another city or village, ward or precinct, in compliance with the requirements with reference thereto as provided by the general laws of the State with reference to registration of voters and conduct of elections.

Hist. C. L. 2255.

CHAPTER XX.

COMPILED STATUTES, CH. 170.

MUNICIPAL BONDS.

SEC. 4109. *Purposes for which bonds may be issued: Limitation on amount.* Every municipal corporation incorporated under the laws of the Territory of Idaho or the State of Idaho shall have power and authority to issue municipal coupons bonds not to exceed at any time in aggregate *ten* (10) per cent of the assessed full cash valuation of the real estate and personal property in said municipal corporation, according to the assessment of the preceding year, for any or all of the purposes specified in the following sections.

1. To provide for the laying, constructing, equipment, maintenance of sewers and drains.

2. To provide for the grading, paving, curbing, sidewalk-ing or otherwise improving streets and alleys, building or constructing of sewers, drains, grading, curbing, sidewalks, crossings and crosswalks, or otherwise improving the intersections of streets and alleys, constructing and laying out of streets and alleys, and the construction or aid in construction of bridges across streams within or contiguous to or within one mile of the exterior limits of any such municipal corporation.

3. To provide for the funding, refunding, purchase and redemption of the outstanding indebtedness of such municipal corporation. Bonds may be issued under this section for the purpose of funding, refunding, purchase or redemption of the outstanding indebtedness of any such municipal corporation when the same can be done to the profit and benefit of such municipal corporation, and without incurring any additional liability, without the submission of the question of issuance of such bonds to the electors of the municipal corporation.

4. To provide for the establishment and maintenance of hospitals, pest houses and cemeteries either within or without the corporate limits of such municipal corporation.

5. To provide for the purchase, improvement, equipment and maintenance of lands for the use of public parks, either within or without the corporate limits of such city, town or village.

6. To provide for the purchase, erection, construction and furnishing of public buildings and building sites for the use of such municipal corporation .

7. To provide for the establishment, equipment and maintenance of a fire department and for the purchase of suitable and necessary apparatus and buildings and building sites for the use thereof and for all other necessary public improvements.

8. To provide for the purchase, erection, construction and furnishing of soldiers' memorials consisting of such public buildings or monuments and building sites for the use of such municipal corporation and for the entertainment of soldiers of the late European war.

'19 c. 71, p. 248.

9. Every municipal corporation, incorporated under the laws of the Territory of Idaho or of the State of Idaho shall have power and authority to issue municipal coupon bonds in a sufficient amount to acquire, by purchase or otherwise, a waterworks plant for such municipality and a water supply therefor, and to construct, enlarge, extend, repair, alter and improve such plant.

10. The issuance of bonds for the purposes aforesaid or any of such purposes, shall be authorized as provided in Section 4114, and one or more bond elections may be called in the manner provided by said statute or amendatory acts, in order to submit to the qualified electors who are tax payers, the question as to whether bonds shall issue in such amount as the City Council, or board trustees, at the time such election is called, shall deem to be necessary for the purposes aforesaid or any of them.

11. All bonds authorized at any municipal election heretofore held as provided in said Section 4114 or acts amendatory thereof, for the purpose of acquiring an adequate water system, by purchase or otherwise, by acquiring additional water and by enlarging, extending, repairing, altering and

improving any municipal waterworks plant, shall be deemed to have been authorized for all or any of the purposes for which such bonds may hereafter be issued under this Chapter, and all such bonds which, at such an election have been heretofore authorized, when issued and sold, are hereby declared to be legal and binding obligations of such municipal corporation, provided all requirements of law have been fully complied with, and the same are hereby declared to be of like force and effect as if the municipality, at the time of such election was called and held, had possessed all the powers herein granted and conferred.

12. Every municipal corporation incorporated under the laws of the Territory of Idaho or the State of Idaho, shall have power and authority to issue municipal coupon bonds, in a sufficient amount to acquire, by purchase or otherwise, a light and power plant for such municipal corporation, *and to construct, enlarge, extend, repair, alter and improve such plant.*

The amount for which bonds may be issued for acquiring light and power plants or either * * * *, *or for the purpose of construction, enlargement, extension, repairing, alteration and improvement of an existing plant or for any, or either of said purposes as herein provided, shall be determined by the Council or Board of Trustees and stated in the ordinance therefor. The issuance of bonds for the purpose aforesaid or any of such purposes, shall be authorized as provided in Section 4114 of the Compiled Statutes of Idaho, 1919, and on or more bond elections may be called in the manner as provided in said statute or amendatory Act, in order to submit to the qualified electors who are tax payers, the question as to whether bonds shall issue in such amount as the City Council or Board of Trustees, at the time any such election is called, shall deem to be necessary for the purposes aforesaid or any or either of them.*

Bonds authorized at any municipal election therefor heretofore held as provided in said Section 4114 or Acts amendatory thereof, for the purpose of acquiring an adequate light and power plant for such municipality, by purchase or otherwise, and by enlarging, extending, repairing, altering and improving any existing municipal light and power plant, shall be deemed to have been authorized for all or any of the purposes for which such bonds may hereafter be issued un-

der this Chapter, and all such bonds which at such election, have been heretofore authorized, when issued and sold, are hereby declared to be legal and binding obligations of such municipality, provided all requirements of law have been fully complied with, and the same are hereby declared to be of like force and effect as if the municipality, at the time such election was called and held, had possessed all the power herein granted and conferred."

'19c. 13, p. 75.

Hist. C. L. 2315; Am. 19c, 71 p. 248; also c. 6 p. 42; C. L. 2315a to 2315k inc.; subd. 8; '19c 71 p. 248; subd. 12; '19c. 13 p. 75; sec. '17c, 16 p. 43-44.

(1) *Cited:* Wiggan v. Lewiston (1902) 8 I. 527, 69 P. 286; Jack v. Grangeville (1903) 9 I. 291, 74 P. 969; (Dis. op.) Feil v. Coeur d'Alene (1912) 23 I. 32, 62, 129 P. 643, 43 L. R. A. (N. S.) 1095; Kellogg v. McRae (1914) 26 I. 73, 141 P. 86.

Cross Reference: Constitutional limitation on indebtedness: Const. VIII, 3; statutory limitation: Sec. 4054.

Town and Village Defined: The words town village are used in the statutes synonymously, and a granting of power to towns to issue municipal coupon bonds includes villages. Brown v. Grangeville, (1902) 8 I. 784, 71 P. 151.

Any defined: The word "any" as used in this section means any one or more of the entire number of purposes mentioned. Platt v. Payette (1911) 19 I. 470, 114 P. 25.

Attempted evasion: A city can not evade the provisions of the statute limiting the bonded indebtedness to a certain percentage of the real estate valuation for the preceding year, by voting bonds for partial payment on a contract, and making no legal provision for the balance due upon said contract. Woodward v. Grangeville (1907) 13 I. 652, 92 P. 840.

(2) *Cited:* Kellogg v. McRae (1914) 26 I. 73, 141 P. 86.

Construed: Under this section and 152:14 cities and villages have ample power to establish the grade of their streets and to reconstruct the roadbed on the grade thus established. Nampa v. Nampa etc. Irr. Dist. (1911) 19 I. 779, 115 P. 979; app. dis. 238 U. S. 643, 50 L. ed. 1502, 35 S. C. R. 602.

Right to require construction of ditches: In exercising its right to grade its streets the city may, if necessary, remove ditches and require their reconstruction by pipe lines laid beneath the surface by the company possessing the franchise and easement for such ditches. *Ib.*

Damages: If abutting property is injured by a city while it is lawfully exercising its power in grading streets and in reconstructing the roadbed, the city is not answerable in damages, in the absence of a statute expressly imposing such liability. *Ib.*

Distinguished from local improvements: Where streets are paved and the assessments are made against the abutting property improvement district bonds may be issued without submitting the question of issuing the bonds to the electors or taxpayers of either the improvement district or the city, but where the cost and expenses are to be paid by the city and bonds are to be issued for the purpose of raising revenue to pay the same, then such question must be submitted to the electors and taxpayers of the city. Byrns vs. Moscow (1912) 21 I. 398, 121 P. 1034.

(3) *Cited*: Veatch v. Moscow, 18 I. 313; 109 P. 722 Hickory v. Nampa 22 I. 41, 124 P. 280.

(5) *Parks*: Grant to municipality of power to maintain park enjoins no absolute duty to do so. Maintenance of parks is primarily a private as opposed to a governmental function. Boise Dev. Co. v. Boise (1917) 30 I. 675, 167 P. 1032.

(9) *Cited*: Jack v. Grangeville 9 I. 291, 74 P. 969; Ostrander v. Salmon, 20 I. 153, 117 P. 692.

Applied: A village has the power and authority to contract for a supply of water.

Pocatello v. Murray 21 I. 180, 197, 120, P. 812, 226 U. S. 318, 38 S. C. R. 107, 57 L. ed. 239.

SEC. 4110. *Joint Light and Power Plant*. In addition to the authority contained in the foregoing section it shall be lawful for two or more municipal corporations, so situated with reference to each other that it is practicable and convenient to furnish the said municipalities and the inhabitants thereof with electric current for light and power purposes from a single plant and system, to join in the construction or purchase of such plant upon a substantial compliance with the provisions of section 4111 to 4113 hereof, and not otherwise.

Hist. C. L. 2315 L. '15, c. 82, Sec. 1, p. 200; phrase "municipal corporation" substituted.

SEC. 4111. *Same: Agreement on Apportionment*. Whenever two or more such municipal corporations desire jointly to construct an electric distributing system to distribute electric current which may be purchased at wholesale, or purchase or construct an electric plant and equipment, it shall be necessary for the municipal councils or other governing bodies of each of such municipal corporations to agree among themselves as to the kind and character of construction of the said plant and system, the total amount of current which may be generated and supplied and the amount to which each municipal corporation shall be entitled, the approximate cost of such plant and system and the proportionate part thereof which shall be borne by each municipal corporation, which proportionate part shall be as nearly just and equitable as possible and shall be determined in such manner as may be agreeable to all concerned.

Hist. C. L. 2315 M. '05, c. 82, Sec. 2, p. 200; phrases "municipal corporations" and "municipal" substituted.

SEC. 4112. *Same: Bond Election*. Whenever the proportionate share of the cost of such construction or purchase to be borne by each municipal corporation has been determined, an election must be held in each municipal corporation, as

now provided by law in similar cases, for the purpose of determining whether or not municipal coupon bonds shall be issued by such municipality in an amount equal to its proportionate share of the cost of such construction or purchase.

Hist. C. L. 2315 N. '15, c. 82, Sec. 3, p. 201; phrase "municipal corporations" substituted.

SEC. 4113. *Same: Committee for Construction or Purchase.* If in each of said municipal corporations the question of issuing bonds for the construction or purpose of such distributing system, electric plant and equipment shall have been favorably decided by the electors of such municipal corporations, said bonds shall be issued as now provided by law, and the municipal councils or other governing bodies of the municipal corporations in question shall meet and organize and appoint a committee, to be composed of their own members, upon which each of said municipalities shall have equal representation, for the purpose of constructing such electric light plant and system, or for purchasing same if one is available, and the said committee shall have all necessary power to make contracts for the construction or purchase of such electric plant and system, and to bind the said municipal corporations as herein contemplated.

Hist. C. L. 2315 O. '15, c. 82, Sec. 4, p. 201; phrases "municipal corporations" and "municipal" substituted.

SEC. 4114. *Bond Ordinance and Election.* Whenever the common council or the trustees of a municipal corporation, or other legislative body of any municipal corporation shall deem it advisable to issue the coupon bonds of such municipal corporation for any of the purposes aforesaid, the mayor and common council or the trustees of such municipal corporation shall provide therefor by ordinance, which shall specify the purpose of issuing such proposed bonds; if it is to create a new debt, the object thereof must be stated, or, if it is to fund or refund any existing indebtedness, it must be described; and, when it consists of warrants or other securities, they must be described by giving their number, date and amount and the fund out of which the same, according to the terms thereof, are payable and the ordinance shall declare the purpose and the total amount for which such bonds shall be issued and designate the provisions to be made to pay the interest on such bonds as it falls due, and also to constitute a sinking fund for the payment of

the principal thereof within 20 years from the time of the issuance of the same.

The ordinance shall also provide for the holding of an election of the qualified electors who are taxpayers of such municipal corporation, of which 30 days' notice, to be provided for in such ordinance, shall be given in a newspaper printed and published in the municipal corporation, but if no newspaper be printed and published in the municipal corporation, then in some newspaper having general circulation therein; such newspaper to be designated in said ordinance. Such election shall be conducted as other municipal elections. The voting at such elections must be by ballot, and the ballot used shall be substantially as follows: "In favor of issuing bonds to the amount of..... dollars for the purpose stated in ordinance No.....," and "Against issuing bonds to the amount of..... dollars for the purpose stated in ordinance No....."

If at such election held as provided for in this chapter two-thirds of the qualified electors who are taxpayers in such municipal corporation, voting at such election, assent to the issuing of such bonds and the incurring of the indebtedness thereby created for the purpose aforesaid, such bonds for said purpose shall be issued in the manner hereinafter provided.

Hist. C. L. 2316. '13 c. 64, Sec. 1, p. 299.

Cited: Byrns v. Moscow (1912) 21 I. 398, 121 P. 1034.

Applied: The provision of this section were not intended to apply to the issuance of refunding bonds of municipalities when the issuance of such bonds would not create an additional indebtedness or liability of the municipality. Veatch v. Moscow (1910) 18 I. 313, 109, P. 722, 21 Ann. Cas. 1332.

Any Defined: The word "any" as used in this section means any one or more of the entire number of purposes mentioned. Platt v. Payette (1911) 19 I. 470, 114 P. 25.

Sufficiency of ordinance: The provision of this section which requires the bonding ordinance to specify the purpose of issuing the proposed bonds is not complied with by an ordinance stating the purpose of the bonds to be "to fund the outstanding indebtedness of said city." Coffin v. Richards (1899) 6 I. 741, 59 P. 562.

Sufficiency of notice: Where the mayor publishes a proclamation for a period of more than 30 days in a newspaper published in the city, giving the time and place when an election will be held to vote upon a proposition to issue bonds for municipal improvement, there is a sufficient compliance with this section. Sommercamp v. Kelly (1902) 8 I. 712, 71 P. 147.

Sufficiency of Ballot: A ballot in the exact language of this section is sufficient. Brown v. Grangeville (1902) 8 I. 784, 71 P. 151.

Sufficiency: How tested: The test of the sufficiency or validity of a notice of ordinance in this respect is whether the voters at the general election held pursuant to the ordinance and notice can be reasonably presumed from the notice itself and the ordinance to have understood the question submitted to them. *Corker v. Mountainhome* (1911) 20 I. 32, 116 P. 108.

Submission of more than one proposition: Several distinct and independent purposes or propositions may be incorporated in one ordinance submitting the question of issuing municipal bonds by a municipal corporation, providing such purposes are separately stated and the voters at the municipal election are given an opportunity to express their will upon each purpose or question as a separate and independent proposition or question. *Ostrander v. Salmon* (1911) 20 I. 153, 117 P. 692.

This section does not require a separate election ordinance for each proposed issue of municipal bonds. Different propositions for different objects may be embodied in one ordinance, provided that each proposition is so clearly and distinctly submitted to the electors of the municipality that they may adopt or reject it, independently of the others. *Platt v. Payette* (1911) 19 I. 470, 114 P. 25.

A proposition can include but one purpose. *Corker v. Mountainhome* (1911) 20 I. 32, 116 P. 108.

Where, however, the proposition to be determined are distinct and different propositions and are to be determined under different provisions of the statute, then there should be a separate ordinance with reference to each proposition. *Byrns v. Moscow*, (1912) 21 I., 398, 121 P. 1034.

CHAPTER XXI.

COMPILED STATUTES, CH. 9.

ARTICLE 2.

CONTESTED ELECTIONS.

SEC. 80. *Grounds for Contest.* The election of any person to any legislative or State executive office may be contested:

1. For malconduct, fraud or corruption on the part of the judges of election in any precinct, township or ward, or of any board of canvassers, or any members of either board, sufficient to change the result:

2. When the incumbent was not eligible to the office at the time of the election;

3. When the incumbent has been convicted of felony, unless at the time of the election he shall have been restored to civil rights;

4. When the incumbent has given or offered to any elector, or any judge, clerk, or canvasser of the election, any bribe or reward in money, property, or anything of value, for the purpose of procuring his election;

5. When illegal votes have been received or legal votes rejected at the polls sufficient to change the result;

6. For any error in any board of canvassers in counting votes or in declaring the result of the election, if the error would change the result;

7. When the incumbent is in default as a collector and custodian of public money or property;

8. For any cause which shows that another person was legally elected.

Hist. C. L. 39. Laws 1909, page 333.

Election Contests: See the case of *Toncray v. Budge*, 14 I., 621; 95 P., 26, for a discussion of election contests.

SEC. 81. *Incumbent Defined.* The term "incumbent" as used in the preceding section means the person whom the canvassers declare elected.

Hist. C. L. 40.

SEC. 82. *Misconduct: When Sufficient to Vitate Election.* When the misconduct complained of is on the part of the judges of election, it shall not be held sufficient to set aside the election unless the vote of the precinct, township or ward would change the result as to that office.

Hist. C. L. 41.

SEC. 83. *Jurisdiction: Contests Over Executive Offices.* The legislature, in joint meeting, shall hear and determine cases of contested election for all officers of the executive department. The meeting of the two houses to decide upon such elections shall be held in the House of Representatives, and the Speaker of the House shall preside.

Hist. C. L. 42

Cited: *Hertle vs. Ball* (1903), 9 I., 193; 72 P., 953.

Primary Election: It is clear that there is no such thing as a contest provided for by the primary election law for the office of Governor, because contests for Governor take place before the legislature meets.

Lansdon v. S. Bd. Canvassers (1910), 18 I., 596, 605; 111 P., 133.

SEC. 84. *Same: Contest Over Legislative Offices.* The Senate and House of Representatives shall severally hear and determine contests of the election of their respective members.

Hist. C. L. 43.

Cross Reference: Each house of the Legislature is the judge of the election, qualifications and returns of its members. Const., Art. III, Sec. 9.

Cited: *Hartle vs. Ball* (1903), 9 I., 193; 72 953.

SEC. 85. *Notice of Contest.* Whenever any elector of this State chooses to contest the validity of the election of any of the officers of the executive department of the State, or

whenever any elector of the proper county or district chooses to contest the election of any member of the legislature from such county or district, such person shall give notice thereof, in writing, and leave a copy thereof with the person whose election he intends to contest, within twenty days after the election (if the person cannot be found in his district, then a copy to be left at his last place of residence in the district) naming the points on which the election shall be contested, and the name of some person authorized by law to administer oaths, selected by him to take the depositions, and the time and place for the taking of the same; the adverse party may also select one such person on his part to attend at the time in place for the taking of the same; the adverse party may also select one such person on his part to attend at the time and place of taking such depositions.

Hist. C. L. 44.

SEC. 86. *Service of Notice: Examination of Witnesses.* The notice provided for in the preceding section shall be served at least ten days before the day fixed for the taking of depositions. The said two persons selected as aforesaid to take the depositions shall proceed jointly, or in default of either one of such persons to attend at the time and place fixed upon, the one attending shall proceed to hear and reduce to writing the testimony of all witnesses who may be produced by either of said parties, and may adjourn from day to day until all said testimony shall have been taken and reduced to writing: *Provided*, That such testimony shall be finally closed on or before the 29th of December following.

Hist. C. L. 45

SEC. 87. *Subpoena: Application for.* When any contestant or returned member is desirous of obtaining testimony respecting a contested election, he may apply for a subpoena to any District Judge of the State, or to the probate judge, or any justice of the peace, notary public, mayor, recorder, or other civil officer authorized to administer oaths within the county where the witness resides or may be found.

Hist. C. L. 46.

SEC. 88. *Same: How Issued.* The officer to whom the application authorized by the preceding section is made, must thereupon issue his writ of subpoena, directed to all such

witnesses as are named to him, requiring their attendance before the officer named in the notice, at some time and place named in the subpoena, in order to be examined respecting the contested election.

Hist. C. L. 47.

SEC. 89. *Disobedience of Subpoena: Penalty.* Any person who, having been summoned in the maner above directed, refuses or neglects to attend and testify, unless prevented by sickness or unavoidable necessity, forfeits the sum of twenty dollars, to be recovered, with costs of suit, by the party at whose instance the subpoena was issued, and for his use, and is guilty of a misdemeanor.

Hist. C. L. 48.

SEC. 90. *Production of Papers.* The officers have power to require the production of papers; and on the refusal or neglect of any person to produce and deliver up any paper or papers in his possession pertaining to the election, or to produce and deliver up certified or sworn copies of the same in case they be official papers, such person is guilty of a misdemeanor.

Hist. C. L. 49.

SEC. 91. *Witnesses' Fees and Mileage.* Every witness attending by virtue of any subpoena herein directed to be issued is entitled to receive the sum of two dollars for each day's attendance, and the further sum of twenty-five cents for every mile necessarily traveled in going and returning. Such allowances must be ascertained and certified by the officer taking the examination, and paid by the party at whose instance such witness was summoned.

Hist. C. L. 50.

SEC. 92. *Testimony: How Taken, Certified and Preserved.* No testimony shall be received by the person officiating at the taking of the depositions on the part of the contestant which does not relate to the points specified in the notice, a copy of which notice shall be delivered to the person or persons so officiating, and said testimony, together with a copy of the notice, when taken, shall be certified by the person or persons before whom the same is taken, enveloped, sealed up, indorsed "Deposition taken in the matter of the contest of the election of A. B. to the office of.....," and directed to the Secretary of State, who shall preserve the same, unopened, till the meeting of the legislature.

Hist. C. L. 51.

SEC. 93. *Examination of Poll Books and Ballots.* If, at the time of taking depositions to be used before the legislature, or either branch thereof, in the case of a contested election, the notice shall allege that it is necessary for the determination of such contest that the ballots or the poll books of any election district or districts should be inspected, the officer or officers before whom such depositions shall be taken shall, on the request of either party to the contest, issue an order requiring the county auditor or other person in whose custody or possession the ballots or poll books may be, naming the district or districts mentioned in the notice, to deliver them to the person or persons therein named, who shall deliver them to the person or persons issuing such order. Such officer or officers shall transmit such ballots or poll books, unopened, in the same envelope with the depositions, as provided in the preceding section.

Hist. C. L. 52.

SEC. 94. *Fees of Officers.* Officers performing services, in a contested election case, may charge and collect from the party at whose instance such services were performed, the same fees as are allowed for similar services in civil cases.

Hist. C. L. 53.

SEC. 95. *Contest Papers Delivered to Presiding Officer.* On the second day of the organization of the legislature, the Secretary of State shall deliver to the Speaker of the House all papers relating to the contested elections of executive officers, and to the presiding officers of each house, all papers relating to contested elections of the members of their respective houses.

Hist. C. L. 54.

SEC. 96. *Same: Notice of Receiving Papers.* Upon the reception, by such presiding officers, of papers relating to contested elections, they shall immediately give notice to their respective houses that such papers are in their possession. Where the papers relate to the contest of a State executive officer, the House of Representatives shall notify the Senate, and a day shall be fixed by both houses, by concurrent resolution, for the uniting of the two houses to decide upon the same, in which decision the yeas and nays shall be taken and entered upon the journal.

Hist. C. L. 55.

SEC. 97. *Opening and Custody of Papers.* The papers re-

lating to any such contest shall be opened only in the presence of the body by the presiding officer, to whom the same shall be delivered. If ballots or poll books are contained therein, they shall, after being opened, remain in the custody of such presiding officer, subject to the inspection of the members, unless they shall by vote be temporarily committed to the chairman of a committee, in which case such chairman shall return them to the proper presiding officer; and they shall, upon the decision of the contest, be again sealed up in an envelope, and returned by mail or otherwise to the office of the county auditor in which they were first required to be filed.

Hist. C. L. 56.

SEC. 98. *Preservation of Evidence.* All the evidence in any contest provided for in the last preceding section, except ballots or poll books, shall, after a decision thereof, be preserved in the office of the Secretary of State.

Hist. C. L. 57.

CHAPTER XXII.

COMPILED STATUTES, CH. 343.

CONSTRUCTION OF STATUTES.

9450. *Holidays.* Holidays, within the meanings of these Compiled Statutes, are:

Every Sunday;

January 1 (New Year's);

February 22 (Washington's Birthday);

May 30 (Decoration day);

June 15 (Idaho Pioneer day);

July 4 (Independence day);

First Monday in September (Labor day);

October 12 (Columbus day);

December 25 (Christmas);

Every day on which an election is held throughout the state; and every day appointed by the President of the United States, or by the Governor of this State, for a public fast, thanksgiving or holiday.

Hist. C. L. 500:10. Laws '11. Ch. 158, p. 482.

CHAPTER XXIII.

COMPILED STATUTES, 173.

COMMISSION FORM OF GOVERNMENT.

Constitutionality: This law, popularly known as the Black law, was held to be constitutional (Sullivan, J. dissenting). *Kessler v.*

Fritchman (1911) 21 I. 30, 119 P. 692; Swain v. Fritchman (1912) 21 I. 783, 125 P. 319.

Character of Law: This law when considered as a whole indicates that the legislature in enacting the same intended to provide a system complete within itself. Where it provides a method or means of doing an act it is intended to be exclusive of any remedy enacted prior to its enactment. Hodge v. Tucker (1914) 25 I. 563, 138 P. 1139.

ARTICLE I. ORGANIZATION.

4172. *To What Cities Applicable.* Any city within the State of Idaho organized under the general laws of the state, or under special charter, or under a general incorporating act, now or hereafter having, as shown by the last preceding state or national census, a population of 2500 persons, or over that number, may become organized as a city under the provisions of this chapter by proceedings as hereinafter provided.

Hist. C. L. 162:1; 11, c. 82, Sec. 1, p. 281.

Cited: Hodges vs. Tucker (1914) 25 I. 563, 138 P. 1139.

Constitutionality: This act is not special or class legislation and is not in violation of Const. III, 19, but by its provisions classifies the cities of the state as clearly authorized under the provisions of Const. XVII, 1. (Sullivan, J. dissents). Kessler v. Fritchman (1911) 21 I. 30, 119 P. 692.

Classification: By this section the legislature intended to provide a system of government which might be adopted for every municipality, whether it had been organized as a city or village, and fixed such classification according to population as provided by the constitution, at the number of 2500. (Sullivan, J. dissents). Kessler v. Fritchman (1911), 21 I. 30, 119 P. 692.

Application to villages: A village organized under the general laws of the state is not required to pass through the process of becoming a city of the second class under the general laws of the state before it can petition for an election to form an organization under this act. (Opinion of Stewart, C. J. Ailshie, J. reserves opinion. Sullivan, J. dissents.) Kessler v. Fritchman (1911), 21 I., 30, 119 P. 692.

Application to special charter city: The law applies to a special charter city. Kessler v. Fritchman (1911) 21 I. 30, 119 P. 692; Swain v. Fritchman (1912) 21 I. 783, 125 P. 319.

4173. *Petition for Organization.* Upon petition of electors in number to 25 per centum of the votes cast for all candidates for mayor at the last preceding general city election of any such city, the mayor shall, by proclamation, issued within 10 days after filing of such petitions, submit the question of organizing as a city under this chapter at a special election to be held at a time specified therein, and within 60 days after said petition is filed. If said plan is

not adopted at the special election so-called, the question of adopting said plan shall not be resubmitted to the voters of said city for adoption within two years thereafter, and then the question to adopt may be resubmitted upon the presentation of a new petition signed by the electors of such city equal in number to 25 per centum of the votes cast for all candidates for mayor at the last preceding general city election.

Hist. C. L. 162:2 '11, c. 82, part of Sec. 2, p. 281.

Election authorized: The election herein provided is not in violation of constitutional provisions. (Sullivan, J. dissents.) Kessler v. Fritchman (1911) 21 I. 30, 119 P. 692.

4174. *Election to Submit Proposition of Organization.* At such election the proposition to be submitted to the electors shall be "Shall the proposition to organize the city of (name of city) under the laws of the Eleventh session of the Legislature of Idaho, approved March 13, 1911, recorded at page 282 of the Session Laws of said Eleventh session, be adopted?" and an election thereupon shall be conducted, the vote canvassed and the result declared in the same manner as provided by law in respect to other city elections. Immediately after such proposition is adopted, the mayor shall transmit to the governor, the secretary of state and to the county auditor of the county in which such city is located each a certificate, stating that such proposition was adopted, and giving the date of the election at which it was adopted.

Hist. C. L. 162:3. '11, c. 82, parts of Sec. 2, p. 282.

4175. *First election of officers.* If the majority of the votes cast shall be in favor thereof the city shall thereupon proceed to the election of five councilmen, one of whom shall be known, designated and elected as the mayor, as hereinafter provided.

At the regular city election after the adoption of such proposition, there shall be elected five councilmen, one of whom shall be known, designated and elected as mayor, which five persons shall be known as the council.

In the event, however, that the next regular city election does not occur within one year after such special election on said question, the mayor, in case said proposition carries, shall, within 10 days after said election, by proclamation, call a special election for the election of five city councilmen, one of whom shall be designated and elected as

mayor, for such city, 60 days' notice thereof, by publication in the official newspaper of such city being given in such call; such election in either case to be conducted as herein provided.

Hist. C. L. 162:4. '11, c. 82, parts of Sec. 2, 2a, pp. 282-3.

3176. *Registration of Electors for First Elections.* For the purpose of the election for the adoption or rejection of the proposition to become organized as a city under this chapter, and for the election provided herein to be called by the mayor's proclamation, for the purpose of electing the first council, in case the proposition carries, it shall not be necessary for any qualified elector of such city, who was duly registered for the last preceding general municipal election held therein, to register for either of said above named elections; the registration books, lists, oaths and all other registration supplies used for such last preceding general municipal election shall be used for both said elections; the same registrars who acted at the last preceding general election shall act, but in case of vacancy from any cause in the office of any registrar, the council shall fill such vacancies: *Provided*, Any qualified elector who was not registered for said last preceding general municipal election may register for said elections above named by applying to the registrar of his ward or precinct within the time the registration books are open for that purpose.

Hist. C. L. 162:5. Laws '11, c. 82, part of Sec. 2b, p. 283.

4177. *Election Officers for First Elections.* The council shall, prior to the said election at which the proposition to become organized under this chapter is submitted to be voted upon, appoint all election officers provided for by the general election laws pertaining to such cities, and said election officers shall act at the said election held to elect the first council, if a special election is called for that purpose: *Provided*, That the council may fill any vacancies that may occur in any of said offices: *Provided, further*, That, if, from any cause, any of the election officers in any ward or precinct should fail to be present at the polling place at the time of opening of the polls, then such vacancy may be filled by the electors present.

Hist. C. L. 162:6. Laws '11, c. 82, part of Sec. 2b, p. 284.

4178. *General Laws Applicable.* All general laws of the State of Idaho governing or pertaining to such cities and not

inconsistent with the provisions of this chapter shall apply to and govern cities organized under this chapter: *Provided*, That no provisions of any special charter or other special act or law which any such city may be operating under at the time of its becoming organized under this chapter, shall thereafter be applicable to such city while it is operating under the provisions of this chapter.

Hist. C. L. 162:7. '11, c. 82, part of Sec. 3, p. 284.

Cross. ref.: A general law relating to cities of the first class was passed subsequently to this law: c. 148.

Act general, not special: That this act is general and not special and applies to all cities within the state having a population of 2500 or more, either organized under the general laws or a special charter, appears by the provisions made in this section. (Sullivan, J. dissents.) Kessler v. Fritchman (1911) 21 I. 30, 119 P. 692.

"Such cities" construed: The words "such cities" as used in this section mean cities of the class to which the one adopting the new form of government would legally belong under the general laws of the state. (Sullivan, J. dissents.) Swain v. Fritchman (1912) 21 I. 783, 125 P. 319.

Special charter cities: Under the provisions of this section a special charter city which has decided by popular vote, in accordance with the provisions of this act, to adopt the commission form of government is thereafter subject to and governed by all the general laws of the state governing or pertaining to cities of the second class which are not inconsistent with the provisions of the commission government act. Swain v. Fritchman (1912) 21 I. 783, 125 P. 319.

4179. *Prior Ordinances Continued in Force.* All by-laws, ordinances and resolutions lawfully passed and in force in any such city under its former organization shall remain in full force until altered or repealed by the council elected under the provisions of this chapter.

Hist. C. L. 162:8. '11, c. 82, part of Sec. 3, p. 284.

Cited: Kessler v. Fritchman (1911) 21 I. 30, 119 P. 692.

SEC. 4180. *Successor to Previous Corporation.* The territorial limits of such city shall remain the same as under its former organization, but such territorial limits may be extended or changed as provided by law, and all rights and property of every description which are vested in any such city under its former organization shall vest in the same under the organization herein contemplated, and no right or liability, either in favor of or against it, existing at the time and no suit or prosecution of any kind shall be affected by such change, and such city shall be the successor of the former organization and shall have perpetual succession; it shall have and exercise all powers, functions, rights and privileges, now or hereafter given or granted it, and shall

be subject to all the duties, obligations, liabilities and limitations now or hereafter imposed upon such municipal corporations by the constitution and laws of the State of Idaho, and shall have and exercise all other powers, functions, rights and privileges usually exercised by, or which are incidental to, or inhere in, such municipal incorporations of like character and degree.

Hist. C. L. 162:9. '11, c. 82, part of Sec. 3, p. 284.

Cited: Kessler v. Fritchman (1911) 21, I. 30, 119, P. 692.

Bonded Indebtedness: Under this section bondholders of a city which has adopted the law have the same rights and remedies that they have always had for the collection of their bonds. The commission government law was never intended to alter, change or impair those obligations. (Sullivan, J. dissents.) Swain v. Fritchman (1912) 21 I. 783, 125 P. 319.

ARTICLE II.

ELECTIONS.

SEC. 4181. *Regular and Special Municipal Elections.* A general municipal election shall be held in such city organized under this chapter on the first Tuesday in April, 1913, and on the first Tuesday in April in every second year thereafter, and shall be known as a general municipal election. A second election shall be held, when necessary, as provided in Section 4204 of this chapter, on the third Tuesday after said general municipal election, and shall be known as the second general municipal election.

All other municipal elections that may be held by authority of this chapter, or of general law, shall be known as special municipal elections.

Hist. C. L. 162:10. '11, c. 82, Sec. 4, p. 285.

NOMINATIONS.

SEC. 4182. *Mode of Election Herein Prescribed Exclusive.* The mode of nomination and election of all elective officers of the city to be voted for at any municipal election shall be as prescribed in this article, and not otherwise.

Hist. C. L. 162:11. '11, c. 82, Sec. 4a, p. 285, "as follows" changed to "as prescribed in this article."

SEC. 4185. *Nominations by Petition.* The name of a candidate shall be printed upon the ballot when a petition for nomination shall have been filed in his behalf, in the manner and form and under the conditions hereinafter set forth.

Hist. C. L. 162:12. '11, c. 82, Sec. 4b, p. 285.

SEC. 4184. *Form of Petition of Nomination.* The petition of nomination shall consist of not less than 25 individuals' certificates, which shall read substantially as follows:

PETITION OF NOMINATION—INDIVIDUAL CERTIFICATE.

State of Idaho,
 County of..... } ss.
 City of..... }

Precinct or Ward No.....

I, the undersigned, certify that I do hereby join in a petition for the nomination of....., whose residence is at No.....street,(city), for the office of....., to be voted for at the municipal election to be held in the city of..... on the.....day of....., 19....., and I further certify that I am a qualified elector and am not at this time the signer of any other petition nominating any other candidate for the above-named office, or in case there are several places to be filled in the above-named office, that I have not signed more petitions than there are places to be filled in the above-named office; that my residence is at No.....street.....(city), and that my occupation is.....

(Signed).....

State of Idaho,
 County of..... } ss.
 City of..... }

....., being first duly sworn, deposes and says that he is the person who signed the foregoing certificate and that the statements therein are true and correct.

(Signed).....

Subscribed and sworn to before me this.....day of....., 19.....

.....Notary Public.

The petition of nomination of which this certificate forms a part, if found insufficient, shall be returned to..... at.....street,(city), Idaho.

Hist. C. L. 162:13. '11, c. 82, Sec. 4c, p. 285.

SEC. 4185. *Clerk to Furnish Printed Blanks.* It shall be the duty of the city clerk to furnish, upon application, a reasonable number of regular printed forms of individual certificates of the above character, also to furnish forms of acceptance or rejection of nomination to any person or persons applying therefor.

Hist. C. L. 162:14. '11, c. 82, Sec. 4d, p. 286.

SEC. 4186. *Regulations Concerning Filing and Signing Certificates.* Each certificate must be a separate paper. All certificates must be of a uniform size, the size to be determined by the city clerk. Each certificate must contain the name of one signer thereto and no more. Each signer must be a qualified elector, must not at the time of signing the certificate have his name signed to any other certificate for any candidate for the same office, nor, in case there are several places to be filled in the same office, signed to more certificates for candidates for that office than there are places to be filled in such office. In case an elector has signed two or more conflicting certificates, all his certificates shall be rejected. Each signer must verify his certificate and make oath that the same is true before a notary public, as provided for in this section. Each certificate shall further contain the name and address of the person to whom the petition is to be returned in case said petition is found insufficient.

Hist. C. L. 162:15; Laws '11, c. 82, Sec. 4e, p. 286.

SEC. 4187. *Time for Filing Nominations.* The petition of nomination, consisting of not less than 25 such individual certificates for any one candidate may be presented to the city clerk not earlier than 45 days, nor later than 30 days, before the said first election. The clerk shall indorse thereon the date upon which the petition was presented to him.

Hist. C. L. 162:16; Laws '11, c. 82, Sec. 4f, p. 286; "nominations" singularized.

SEC. 4188. *Correction of Petition.* When the petition of nomination is presented for filing to the city clerk he shall forthwith examine the same and ascertain whether it conforms to the provisions of this article. If found not to conform thereto, he shall then and there, in writing, designate on said petition the defect or omission or reason why such petition can not be filed, and shall return the petition to the person named as the person to whom the same may be returned in accordance with this article. The petition may then be amended and again presented to the clerk if within the time allowed for filing such petition, as in the first instance. The clerk shall forthwith proceed to examine the amended petition as hereinbefore provided for the original petition. The petition may be amended any number of times, provided that the last amended petition is on file within the time before the election herein prescribed for

the filing of original petitions. If necessary, the council shall provide extra help to enable the city clerk to perform satisfactorily, and in due time and promptly, the duties imposed by this section.

Hist. C. L. 162:17. '11, c. 82, Sec. 4g, p. 286.

SEC. 4189. *Revocation of Certificate.* Any signer to the petition of nomination and certificate may withdraw his name from the same by filing with the city clerk a verified revocation of his signature before the filing of the petition with the clerk, and not otherwise. He shall then be at liberty to sign a petition for another candidate for the same office.

Hist. C. L. 162:18; Laws '11, c. 82, Sec. 4h, p. 287.

SEC. 4190. *Withdrawal by Nominee.* Any person whose name has been presented under this article as a candidate may, not later than 30 days before the date of election, cause his name to be withdrawn from nomination by filing with the city clerk a request therefor in writing, and no name so withdrawn shall be printed upon the ballot. If, upon such withdrawal, the number of candidates remaining does not exceed the number so to be elected, then other nominations may be made by filing petitions therefor not later than 20 days prior to such election.

Hist. C. L. 162:19; Laws '11, c. 82, Sec. 4i, p. 287.

SEC. 4191. *Filing of Petition by Clerk.* If either the original or the amended petition of nomination be found sufficiently signed, as hereinbefore provided, the clerk shall file the same 25 days before the date of election. When a petition of nomination shall have been filed by the clerk, it shall not be withdrawn nor added to, and no certificates shall be revoked thereafter.

Hist. C. L. 162:20; '11, c. 82, Sec. 4j. p. 287.

SEC. 4192. *Preservation of Petitions.* The city clerk shall preserve in his office for a period of two years all petitions of nomination and all certificates belonging thereto filed under this article.

Hist. C. L. 162:21; Laws '11, c. 82, Sec. 4k, p. 287.

SEC. 4193. *Acceptance of Nomination: Form.* Any person nominated under this chapter shall file his acceptance with the clerk not later than 25 days before the day of election; and in the absence of such acceptance, the name of the candidate shall not appear on the ballot. Such acceptance shall be substantially in the following form:

State of Idaho, }
County of } ss.
City of

I, _____, having heretofore been nominated for the office of _____, of the city of _____ do hereby accept said nomination. I hereby declare that I am not a candidate as the nominee or representative of, or because of any promised support from, any political party, or any committee or convention representing or acting for any political party or organization.

(Signed) _____ (Candidate)

Subscribed and sworn to before me this.....
day of....., A. D. 19.....

Hist. C. L. 162:22; Laws '11, c. 82, Sec. 41, p. 287.

SEC. 4194. *Certification and Publication of Nomination.* Immediately after such petitions are filed the clerk shall enter the names of the candidates in a list, with the offices to be filled, and shall, not later than 20 days before the said first election, certify such list as being the list of candidates nominated as required by this chapter, and the city council shall cause said certified list of names and the offices to be filled to be published in the proclamation calling for the election, the first publication of the proclamation which includes the said list to be at least 10 days before the said first election in not more than two daily papers of general circulation published in such city, and if no daily papers are published in the city, then in some other newspaper published in the city. Said proclamation shall conform in all respects to the general state law governing the conduct of municipal elections now or hereinafter in force except as above required.

Hist. C. L. 162:23; Laws '11, c. 82, Sec. 4m, p. 288.

FORM OF BALLOT.

SEC. 4195. *Preparation of Ballots: Instruction to Voters.* The city clerk shall cause the ballots to be printed and bound and numbered as provided for by general law, except as otherwise required in this chapter. The ballots shall be uniform in size; no exact size is prescribed for the ballots, but they shall be of sufficient size to contain the list of names

and the respective offices as published in the proclamation, and shall have printed thereon substantially the following:

Official Ballot.

General (or Special) Municipal Election, City of.....
(Inserting date thereof.)

Instructions to voters: To vote, stamp or write a cross (X) in the square opposite the name of the candidate for whom you desire to vote. To vote on any ordinance or other question submitted place a cross (X) in the square to the right of such ordinance, or other question, in the one marked (yes) or (no) according to the way you desire to vote on it. All marks otherwise made are forbidden. All distinguishing marks are forbidden and make the ballot void. If you, by mistake or accident, mark, tear or deface or otherwise mutilate this ballot, return to the election judges and obtain another ballot.

Hist. C. L. 162:24. '11, c. 82, Sec. 4n, p. 288.

SEC. 4196. *Same: Arrangement of Names of Candidates.* All ballots shall be precisely of the same size, quality, tint of paper, kind of type and color of ink, so that without the number it would be impossible to distinguish one ballot from another; and the names of all candidates printed upon the ballot shall be in a type of the same size and style. The form shall be set up with the names of candidates in the order in which they appear upon the form of official ballot prepared by the city clerk; in printing each set of official ballots for the various election precincts or wards, the position of the names shall be changed in each office division as many times as there are candidates in the office division or group in which there are the most names; as nearly as possible, an equal number of ballots shall be printed after each change. In making the changes of position, the printer shall take the line of type at the top of each office division and place it at the bottom of that division, showing up the column so that the name that was second before shall be the first after the change. After the ballots are printed, before being cut, they shall be kept in separate piles for each change of position and shall then be piled, taking one from each pile and placing it upon the pile to be cut, the intention being that every other ballot in the pile of printed sheets shall have the names in different position. After the piles are made in this manner, they shall be cut

and placed in blocks of 100 ballots in each block, every other ballot in such blocks to have the names in different position, as nearly as practicable. Nothing shall be placed on any ballot which shall be indicative of the source of the candidacy or of the support of any candidate or of the principles or platform of any candidate, and no emblem of any kind indicative of any party organization shall be placed upon any such ballot.

The name of no candidate who has been duly and regularly nominated and has not withdrawn his name as hereinafter provided shall be omitted from the ballot, and all names shall be on one form of ballot.

Hist. C. L. 162:25. '11, c. 82, first part of Sec. 4o, p. 289, and Sec. 4q, p. 290.

SEC. 4197. *Same: Submission of Miscellaneous Questions.* In addition thereto, the ballot shall, in the discretion of the city clerk, be of sufficient size to permit a column on the right hand side of the ballot on which all other questions, ordinances and measures to be voted upon at the municipal elections, as provided for under this chapter, may be placed. The size of the ballot and the space to be left for such column shall be determined by the city clerk ascertaining the number of other questions to be voted upon at any municipal election: *Provided, however,* That if, in the opinion of the city clerk, the placing of such other questions, ordinances and measures, as are to be submitted, on the same ballot with the names of the candidates to be voted for for the various offices, would make such ballot cumbersome, or, in his opinion, too large, then such clerk shall have printed separate ballots for such other questions, ordinances and measures, which ballots shall be uniform in size and color and of sufficient size to contain all such questions, ordinances and measures submitted at the same election: *Provided, further,* That, if any of the questions, ordinances or measures are printed on separate ballots, then all must be printed on such separate ballot and all on one form of ballot, which separate ballot shall, when used, be of a different tint from the ballots which contain the names of the candidates to be elected: *Provided, further,* That any proper ordinance or question which was not printed on the ballots, used at said first election, and which, complying with the provisions of

this chapter, may properly be submitted at the time of said second election provided for herein, may be submitted and voted upon at the second election: And, *Provided, further*, That no such second election shall be held for the sole and only purpose of voting on proposed ordinances, or other questions, and in cases where no second election is required to be held for the purpose of electing officers, the proposed ordinances and other questions must be submitted at an election called for that purpose in the manner as provided in this chapter.

Hist. C. L. 162:26; Laws '11, c. 82, part of Sec. 40, p. 289.

SEC. 4198. *Ballots for Second Election.* All ballots used for second election, when such second election, according to the provisions of this chapter, is necessary, shall fully comply with the requirements of the ballots for the first election, as set forth above, for all candidates for all offices who were not elected by such majority vote at said first election: *Provided*, That no question or ordinance submitted and voted upon at said first election shall be resubmitted and voted upon at said election should the same be placed upon the ballots for said election, provided for herein.

Hist. C. L. 162:27, '11, c. 82, Sec. 4p. p. 290.

SEC. 4199. *Form of Ballot: General Arrangement.* The form of ballot to be used for such first and second elections provided by this chapter shall be substantially as follows: *Official (First or Second Election) Ballot. Candidates for Nomination (or Election) for Mayor and Councilmen of.....(City) at the (First or Second) Election.*

Election to be held....., 19.....
 For mayor
 (Vote for one)
 (Names of candidates)
 For councilmen
 (Vote for—here insert number)
 (Names of candidates)
 Official ballot attest:
 (Signature)

.....
 City Clerk.

Hist. C. L. 162:28; Laws '11, c. 82, Sec. 4r, p. 291.

SEC. 4200. *Same: Squares for indicating choice.* A half-

inch square shall be provided at the right of the name of each candidate wherein to mark the cross (X). Two such squares shall also be placed to the right of any ordinance or question to be voted on, whether they are printed on the same ballot with the names of candidates or printed on separate ballots, and in the upper square shall be printed the word "no," and if the voter is in favor of the ordinance or question he shall place his cross in the square containing the word "yes," and if opposed, he shall place his cross in the square containing the word "no," but it shall not be compulsory to vote on any ordinance or question submitted. Above each ordinance (or measure) there shall be placed on the ballot the following words: "Shall the following ordinance (or measure) be adopted?"

Hist. C. L. 162:29; Laws '11, c. 82, Sec. 4s, p. 291.

SEC. 4201. *Same: Spaces for Additional Names.* Half-inch spaces shall be left below the printed names of candidates for each office equal in number to the number to be voted for, wherein the voter may write the name of any person or persons for whom he may wish to vote.

Hist. C. L. 162:30, '11, c. 82, Sec. 4t, p. 291.

SEC. 4202. *Sample Ballots.* The clerk shall cause to be printed sample ballots for both first and second elections where a second election is to be held, and sample ballots containing all ordinances and measures to be submitted, which sample ballots shall be in the same form as the official ballots to be used, except they shall have printed thereon the words "sample ballot" and shall be printed on a different colored paper from the official ballot and shall not be numbered; and the clerk shall furnish copies of the same, on application at his office, to anyone applying therefor, at least five days before the election.

Hist. C. L. 162:31; Laws '11, c. 82, Sec. 4u, p. 291.

MISCELLANEOUS PROVISIONS.

SEC. 4203. *Number of Votes Necessary to Elect.* In case there is but one person to be elected to an office as mayor, the candidate receiving a majority of the votes for all candidates at the said first election for that office shall be declared elected; in case there are two or more persons to be elected to an office, as that of councilmen, then those individual candidates, if any, equal in number to the number to be elected, who receive the number of votes greater than

one-half the number of ballots cast at such election, shall be declared elected: *Provided, however,* That no person shall be declared elected to any office at such first election unless the number of votes received by him shall be greater than one-half the number of ballots cast at such election for such office.

Hist. C. L. 162:32; '11, c. 82, Sec. 4v, p. 292.

SEC. 4204. *Second Election: When Necessary.* If at any election held as above provided there be any office to which the required number of persons were not elected, as above provided, then as to such office the said first election shall be construed to have been a primary election for the nomination of candidates, and the second election shall be held to fill such office or offices. The candidates not elected at such first election, equal in number to twice the number to be elected to any given office, which was not so filled by the said first election, or less, if so there be, who receive the highest number of votes for the respective offices at such first election, shall be the only candidates at such second election: *Provided,* That if there be any person, who, under the provisions of this article, would have been entitled to become a candidate for any office, except for the fact that some other candidate received an equal or tie number of votes therefor, then all such persons receiving an equal or tie number of votes shall likewise become candidates for such office at such second election, and their names shall be also placed on the ballot for such second election.

The candidates, equal in number to the persons to be elected at such second election, who shall receive the highest number of votes at such second election, shall be declared elected to such office.

Hist. C. L. 162:33; ", c. 82, Sec. 4w, p. 292; "a candidate" inserted after "become."

Cross ref. Express reference to this section: Regular and special elections: 4181.

SEC. 4205. *Same: Time for Holding.* The said second election, if necessary to be held, shall be held on the third Tuesday after the first election.

Hist. C. L. 162:34; '11, c. 82, Sec. 4x, p. 292.

SEC. 4206. *Same: Conduct of Election.* All the provisions and conditions above set forth as to the calling, holding and conducting of elections, so far as they may be applic-

able shall govern the second election, except that notice of election and list of candidates and offices to be filled need be published twice only: And *Provided also*, That the same precincts, or wards, and polling places, the same officers of election, the same registrar and registration books and lists and check and tally books shall, if possible, be used.

Hist. C. L. 162:35; '11, c. 82, Sec. 4y, p. 292.

SEC. 4207. *Registration.* The registration books shall close on the Saturday night preceding the said first election, at 9 o'clock p. m., and shall remain closed, and no person be allowed to register until on Wednesday following said first election; if a second election is to be held, then any qualified elector who was not properly registered for said first election may apply to the registrar and register for the said second election at any time during business hours and while said books are open, as required by law until the Saturday night at 9 o'clock preceding said second election, when said registration books are closed, and no person shall be permitted to register for said second election after said registration books are closed. Any elector who is not registered as required shall not be entitled to vote at either said first or said second election. After closing said registration books, the registrar shall prepare his registration books alphabetically, and his appointment, duties and compensation shall be the same as provided by general law, except as herein otherwise provided.

No qualified elector who is duly registered as a voter at the last preceding general municipal election next preceding the adoption by the city of the provisions of this chapter, shall be required to reregister for the election at which is submitted the proposition of adopting the provisions of this chapter, or for any election held in such city after the adoption of the general provisions of this chapter, so long as he remains or has remained continuously after such registration a duly qualified elector of such city: *Provided*, That if, after any qualified elector has registered for the said last preceding general municipal election prior to the adoption of this chapter, or after registering for an election for the adoption of or after the adoption of this chapter, he has failed to keep his continuous residence and full qualifications to vote in such city, regardless of how short the term of disqualification shall exist or have existed, he shall not

be entitled to vote at any election after such disqualification existed unless he shall have reregistered for the election at which he next desires to vote.

Hist. C. L. 162:36; '11, c. 82, Sec. 4z, p. 293.

Cross ref. Qualification of electors and registration at municipal elections: Sec. 4032 et seq.

SEC. 4208. *Failure to Qualify Creates Vacancy.* If a person elected fails to qualify, the office shall be filled as if there were a vacancy in such office as hereinafter provided.

Hist. C. L. 162:37; '11, c. 82, Sec. 5, p. 293.

SEC. 4209. *Informalities Do Not Invalidate Elections.* And informalities in conducting municipal elections shall not invalidate the same if they have been conducted fairly and without fraud and in substantial conformity to the requirements of this chapter.

Hist. C. L. 162:38; '11, c. 82, Sec. 6, p. 294.

SEC. 4210. *Application of general election laws.* The provisions of the state law relating to the qualifications of electors, appointments, qualification, duties and compensation of registrars, and the registration of voters, the manner of voting, the duties of election officers, the canvassing or returns and all other particulars in respect to the calling, holding, management and conduct of elections, so far as they may be applicable, and not herein otherwise specially provided for, shall govern all municipal elections, provided that the city council shall meet as a canvassing board and duly canvass and certify the election returns within four days after any municipal election.

Hist. C. L. 162:39; '11, c. 82, Sec. 7, p. 294.

Cross ref. Municipal elections: 4029 et seq. General election laws: Sec. 488 et seq.

OFFENSES.

SEC. 4211. *Corrupt Practices: Penalties.* No person shall, in order to aid or promote his own nomination or election to any office under the provisions of this chapter, directly or indirectly, either himself or through any other person, give, pay, extend or contribute, promise to give, pay, expend or contribute any money or other valuable thing or service except for the printing and distribution of circulars, cards, pamphlets, newspaper articles and other publications whereby he states his position or views upon public questions or any matters relating to the affairs of such municipality, for the necessary expenses in hiring or renting halls for the purpose of holding public meetings to address the

voters and others upon such questions and matters relating to his candidacy, and for stationery and postage.

No person shall agree to perform any services in the interests of any candidate for any such office provided for in this chapter in consideration of any money or other valuable thing for such services performed in the interest of any such candidate.

It shall be unlawful for any person to use any carriage, automobile or vehicle of any kind or description for the transportation of voters to or from the places of registration during the period provided for registration, or to or from the polling places on the day of any municipal election held in cities organized under this chapter: *Provided*, This shall not prohibit any person or member of his family from going to or from such named places in his own conveyance, or from using his own conveyance to transport crippled, aged, infirm or sick persons to or from said places.

Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof before any court having jurisdiction, be punished by a fine not exceeding \$500, or be imprisoned in the county jail not exceeding 90 days, or by both such fine and imprisonment.

Hist. C. L. 162:40; '11, c. 82, Sec. 8, p. 294.

SEC. 4212. *Same.* Any person offering to give a bribe, either in money or other consideration, to any elector for the purpose of influencing his vote at any election provided in this chapter, or any elector entitled to vote at any such election receiving and accepting such bribe or other consideration; any person making false answers to any of the provisions of this chapter relative to his qualifications to vote at said election; any person wilfully voting or offering to vote at such election who has not been a resident of this state for six months last preceding said election, or who is not 21 years of age, or is not a citizen of the United States, or knowing himself not to be a qualified elector of such city or precinct or ward where and at the time he offered to vote; any person knowingly procuring, aiding or abetting any violation hereof shall be deemed guilty of a misdemeanor, and shall, on conviction thereof before any court having jurisdiction, be punished by a fine of not less than \$100 nor more than \$500, or be imprisoned in the city or county jail

not less than 10 days, nor more than 90 days, or by both such fine and imprisonment.

Hist. C. L. 162:41; '11, c. 82, Sec. 9, p. 295.

ARTICLE III.

OFFICERS.

SEC. 4213. *Governing body.* Every such city shall be governed by a council composed of five councilmen, one of whom shall be known, designated and elected as mayor, chosen and elected from the city at large as provided in this chapter.

Hist. C. L. 162:42; '11, c. 82, part of Sec. 10, p. 295.

SEC. 4214. *Mayor and council: Terms.* The first mayor elected after the adoption of this chapter shall hold office until the next general election, or until his successor shall be elected and qualified; thereafter a mayor shall be elected every two years, and shall hold office until his successor shall be elected and qualified, except as hereinafter provided.

The councilmen first elected after the adoption of the provisions of this chapter, upon their qualification, shall be divided into two classes of two members each, the first class to serve for a term of two years each, and the second class to serve for a term of four years each, which division and determination shall be made by lot under the supervision of the mayor. The two councilmen who are to serve the first two years after the adoption of this chapter shall serve only until the next general election. The two who are by such determination to hold office for four years shall hold office until the second general election, and until their successors are elected and qualified. And at each general municipal election thereafter there shall be elected two members of the council on such general ticket for terms of four years each.

In case of vacancy among the hold-over members temporarily filled by appointment of the council as herein prescribed, such vacancy shall be filled in the next ensuing general election for the remainder of the term, in the same manner as herein prescribed for the nomination and election of other councilmen.

Hist. C. L. 162:43; '11, c. 82, part of Sec. 2, p. 282; "successors" singularized.

Except as hereinafter provided: This is an absolute exception and makes the method of removal provided in this chapter an exclu-

sive and not a cumulative remedy for the removal of the mayor. *Hodges v. Tucker* (1914) 25 I. 563, 138 P. 1139.

SEC. 4215. *Vacancies: How filled.* If a vacancy shall occur in the office of mayor or councilman, the council shall appoint a qualified person to fill such vacancy. If at any second municipal election, when such second municipal election is necessary, held under the provisions of this chapter, the mayor or other member of the council be not elected by reason of a tie vote among any of the candidates therefor, then the council after the qualification of the persons, if any, elected thereto at such election, shall appoint one of the persons receiving such tie vote to fill such office as in the case of a vacancy therein. In each case the person so appointed shall hold office, subject to the provisions of the recall until the next general municipal election.

Hist. C. L. 162:44; '11, c. 82, Sec. 2a, first paragraph, p. 283; "qualifications," for "qualifications" "until" for "under" in last clause.

Cited: *Hodges v. Tucker* (1914) 25 I. 563, 138 P. 1139.

SEC. 4216. *The council: Quorum, etc.* When any reference is made in this chapter to the council or members thereof, or to councilmen, the mayor shall be considered as one of the council for all purposes and shall vote on all questions the same as any other member of the council. Three of the five members of the council (one of whom may be the mayor) shall constitute a quorum, and the affirmative vote of three members, shall be necessary to adopt any motion, resolution or ordinance, or pass any measure, unless a greater number is provided for in this chapter. Upon every vote upon orders, resolutions, measures and ordinances, the yeas and nays shall be called and recorded, and every order, resolution or ordinance shall be reduced to writing and read before the vote is taken thereon. The mayor shall preside at all meetings of the council; he shall have no power to veto any measure, resolution or ordinance, but every order, resolution and ordinance passed by the council must be signed by the mayor, or by two councilmen, and be recorded in the regular book provided for that purpose before the same shall be in force; the original thereof shall be placed on file and at all times be subject to public inspection.

Hist. C. L. 162:45; '11, c. 82, part of Sec. 10, p. 295.

SEC. 4217. *Administrative departments.* The council shall have and possess, and the mayor and council and its members shall exercise all executive, legislative and judicial

power and duties now had, possessed and exercised by the mayor, city council, board of public works, board of library trustees and other executive and administrative officers in cities, except as hereinafter provided.

The executive and administrative powers, authority and duties in such cities shall be distributed into any among five departments, as follows:

1. Department of public affairs.
2. Department of accounts and finances.
3. Department of public safety.
4. Department of streets and public improvements.
5. Department of parks and public property.

The council shall, by resolution, determine the powers and duties to be performed by each member thereof, and assign them to the appropriate department; shall, by resolution, prescribe the powers and duties of all officers and employees; may assign particular officers and employees to one or more of the departments; may require an officer or employee to perform duties in two or more departments; and may make such other rules and regulations, or change such rules and regulations, as may be necessary or proper for the efficient and economical conduct of the business of the city.

Hist. C. L. 162:46; '11, c. 82, Sec. 11, p. 296.

Cited: (In dis. op.) Swain v. Fritchman (1912) 21 I. 783, 125 P. 319.

Except as hereinafter provided: This is an absolute exception, making the provisions of this law exclusive. Hodges vs. Tucker, (1914) 25 I. 563, 138 P. 1139.

SEC. 4218. *Same: Superintendents.* The mayor shall be superintendent of the department of public affairs and the council shall, at the first regular meeting after election of its members, designate, by majority vote, one councilman to be superintendent of the department of accounts and finances; one to be superintendent of the department of public safety; one to be superintendent of the department of streets and public improvements; one to be superintendent of parks and public property. After said designation has been made, the council shall pass a resolution embodying said designation, which shall be copied in full in the minutes of the council and shall be kept on file in the city clerk's office for inspection; but such designation may be changed by the council by resolution whenever it appears that the public service will be benefited thereby.

Hist. C. L. 162:47; '11, c. 82, part of Sec. 12, p. 296.

SEC. 4219. *Appointive officers.* The council shall, at said first meeting, or as soon thereafter as practicable, elect by majority vote so many of the following officers as it may deem necessary for such duty: A city clerk, city attorney, city assessor, city treasurer, city auditor, city engineer, city physician, chief of police, chief of fire department, street commissioner, library trustees, and such other officers and assistants as shall be provided for by ordinance when deemed necessary to the proper and efficient conduct of affairs of the city; and shall appoint a police judge, or may provide, by ordinance, that some other officer, to be designated, shall act as police judge: *Provided, however,* That before any officer, or assistant to any such officer, shall enter upon his duties in such office, or be entitled to any pay for service performed, the city council shall, by resolution, duly passed and approved and placed on file, provide the compensation to be paid for such officer or appointee, and before either such officer, or appointee, shall enter upon his or her duty as such officer, and before he or she shall be entitled to receive any pay for services performed as such officer, such officer or appointee shall sign a statement to the effect that he accepts the office for the compensation provided in said resolution, and said statement shall be made a part of the minutes of the council and shall be kept on file in the city clerk's office. Any officer, or assistant, elected or appointed by the council, may be removed from office at any time by a vote of a majority of the members of the council, except as otherwise provided for in this chapter.

Hist. C. L. 162:48; '11, c. 82, part of Sec. 12, p. 296.

SEC. 4220. *Same: Removal and change.* The council has the power, from time to time, to create, fill and discontinue appointive offices and employments, whether prescribed herein or not, according to their judgment of the needs of the city, and may, by majority vote of all the members of the council, by resolution, remove any such appointive officer or employee, except as otherwise provided for in this chapter. It may, by resolution, or otherwise, prescribe, limit or change the compensation of such officer, or employee, provided the same be done by resolution, duly passed and approved by the council; and, *Provided,* That all officers and employees affected by such change shall resign before such change takes effect and file the statement as above required for new appointees: *Provided, further,* That when any appointive officer or any office provided or created by the council shall be discontinued by the council, as herein pro-

vided, then the person holding such office, is by such discontinuance, discharged from said office.

Hist. C. L. 162:49; '11, c. 82, Sec. 13, p. 297.

SEC. 4221. *Offices and office hours.* The mayor and council shall have a regular office in the city, which, in cities having a city hall, shall be at the city hall; and the mayor and council shall designate, by resolution, the hours and dates that they shall be in their said office, and after such designation shall have been made, it shall be the duty of the mayor and councilmen to be at their respective offices at said times: *Provided, however,* That the council may, by resolution, change said date and said hours when deemed expedient, provided such resolution shall be passed at a regular meeting of the city council, or at a special meeting in which notice thereof is given.

Hist. C. L. 162:50; '11, c. 82, Sec. 14, p. 297.

SEC. 4222. *Salaries of mayor and council.* The total compensation of the mayor and councilman shall be as follows:

In cities having by the last preceding state or national census, a population of 2500 and less than 7000, the mayor's annual salary shall be \$300 and each councilman's annual salary shall be \$150.

In cities having, by such census, a population of 7000 and less than 10,000, the mayor's annual salary shall be \$600, and the annual salary of each councilman shall be \$450.

In cities having, by such census, a population of 10,000 and less than 15,000, the mayor's annual salary shall be \$1200, and the annual salary of each councilman shall be \$900.

In cities having, by such census, a population of 15,000, and less than 25,000, the mayor's annual salary shall be \$1800, and the annual salary of each councilman shall be \$1200.

In cities having, by such census, a population of 25,000 and less than 40,000, the mayor's annual salary shall be \$3000, and the annual salary of each councilman shall be \$2000.

Such salaries shall be payable in equal monthly instalments: *Provided,* That the above salaries may be increased or decreased at any time by means of the initiative power in this chapter conferred.

Hist. C. L. 162:51; '11, c. 82, Sec. 15, p. 298; in last proviso the phrase "in any city which had adopted the provisions of the act" omitted. The omission makes the meaning clear and unambiguous.

SEC. 4223. *Salaries of appointive officers.* Every other officer, appointee or assistant and all other employees of such city shall receive such salary as the council shall, by ordinance, provide, payable in equal monthly installments, or at such shorter periods as the council shall determine: *Provided*, That when any officer or employee of such city, so appointed, shall cease his employment in the city for any cause, he shall then be entitled to receive the compensation due him at the time of his ceasing his employment as soon as the amount thereof be determined, whether it be at a regular paying period or not.

Hist. C. L. 162:52; '11, c. 82, Sec. 16, p. 298.

SEC. 4224. *Meetings of council.* Regular meetings of the council shall be held on the first Monday after the election of the mayor and council, and thereafter at least twice each month. The council shall provide by ordinance for the time of holding regular meetings; a special meeting may be called at any time by the mayor or two councilmen. All meetings of the council whether regular or special shall be open to the public and at the regular place designated for all council meetings.

Hist. C. L. 162:53; '11, c. 82, Sec. 17, p. 298, and last sentence of Sec. 18, p. 299.

Cited: (In dis. op.) Swain v. Fritchman (1912) 21 L., 783, 808, 125 P. 319.

SEC. 4225. *Call for special meetings.* The call for all special meetings shall state therein the object and purposes of such meetings, and no other business shall be transacted at such meeting. The notice of the call for any special meeting shall be served on each member of the council not less than three hours before the time set for holding such meetings, and such notice shall be served by some member of the police force or some other suitable person, and a return thereof made, showing that service was made, by delivering a copy personally to the member, or by leaving a copy thereof at his regular place of business during business hours, or by leaving the same at his residence.

Hist. C. L. 162:54; '11, c. 82, Sec. 18, p. 299; last sentence transposed to preceding section.

SEC. 4226. *Duties of mayor: Executive duties.* The mayor shall be the president of the council, and shall preside at its meetings, and shall supervise and be charged with general oversight over all departments of the municipal gov-

ernment, and shall report to the council for its action all matters requiring attention in either. The mayor, or acting mayor, or in the mayor's absence or disability, or in case of vacancy in that office, shall execute all contracts for and on behalf of such city, and every contract shall be signed by him and attested by the city clerk under the seal of the city before the city shall be liable thereon.

The mayor shall be active and vigilant in requiring any officer of the city to exhibit his accounts or other papers, and make reports to the council, in writing, touching any subject or matter pertaining to said officer, whenever he may deem it necessary.

The mayor shall be active and vigilant in enforcing all laws and ordinances for the government of the city, and he shall cause all subordinate officers to be dealt with promptly for any neglect or violation of duty.

The mayor is hereby authorized to call on every male inhabitant of the city over 18 and under 50 years of age to aid in enforcing all laws and ordinances of the city, and, in cases of necessity, to call out the militia within the city to aid in the suppression of any riot or unlawful assembly or in the enforcement of any ordinance; and any person who shall not obey such call shall forfeit to the city a sum not exceeding \$100, which shall be recovered in an action in the name of the city in any court of competent jurisdiction.

Hist. C. L. 162:55; '11, c. 82, Sec. 19, p. 299.

Status of mayor: Under this law the mayor is mayor in name only. He is, as a matter of fact, only one of five councilmen. (Dis. op.) *Hodges v. Lemp* (1913) 24 I. 399, 415, 135 P. 250.

SEC. 4227. *Same: Supervision of public utilities.* The mayor shall be charged with the general supervision of all public utility companies, in so far as they are subject to municipal control; he shall keep himself fully informed as to their compliance in all respects with the law, and he shall see that all franchises and contracts with such public utility companies are faithfully observed.

The mayor shall cause to be instituted such actions or proceedings as may be necessary to prosecute public utility companies for violation of the law, franchises, or contracts, and to revoke, cancel, or annul all franchises that may have been granted by the city to any person, firm or corporation, which have become forfeitable in whole or in part, or which, for any reason, are illegal or void, and not binding upon the

city. The city attorney, on demand of the mayor, or on demand of the majority of the other members of the council, must institute and prosecute the necessary proceedings to enforce the provisions of this section.

Hist. C. L. 162:56; '11, c. 82, Sec. 20, p. 299, and part of Sec. 21, p. 300.

SEC. 4228. *Same: Miscellaneous duties.* The mayor shall exercise such other powers and perform such other duties as may be prescribed by law and ordinance.

Hist. C. L. 162:57; '11, c. 82, part of Sec. 21, p. 300.

SEC. 4229. *Acting Mayor.* The superintendent of accounts and finance shall be vice president of the council, and in case of vacancy in the office of mayor, or the absence or inability of the mayor, shall perform the duties of the mayor and be known as acting mayor.

Hist. C. L. 162:58; '11, c. 82, part of Sec. 21, 300.

SEC. 4230. *City officers not to be interested in city contracts.* No officer or employee, elected or appointed in any such city, shall be interested, directly or indirectly, in any contract or job for work or materials, or the profits thereof, or services to be furnished or performed for the city; and no such officer or employee shall be interested, directly or indirectly, in any contract or job, for work or materials, or the profits thereof, or services to be furnished or performed for any person, firm, or corporation operating any interurban railway, street railway, gas works, waterworks, electric light or power plant, heating plant, telegraph line, telephone exchange or other public utility within the territorial limits of said city.

Hist. C. L. 162:59; '11, c. 82, part of Sec. 22, p. 300.

SEC. 4231. *Councilmen prohibited from voting on certain franchises.* No councilman shall vote upon any ordinance granting a franchise to any company, firm or corporation of which he is a member, officer or a stockholder, and, if he does so such ordinance shall be void.

Hist. C. L. 162:60; '11, c. 82, part of Sec. 22, p. 300.

SEC. 4232. *Officers prohibited from using free privileges.* No other officer or employee shall accept or receive, directly or indirectly, from any person, firm or corporation operating within the territorial limits of said city any interurban railway, street railway, gas works, waterworks, elec-

tric light or power plant, heating plant, telegraph line or telephone exchange, or other business using or operating under a public franchise, any frank, free ticket, or free service, or accept or receive, directly or indirectly, from any such person, firm or corporation any other service upon terms more favorable than are granted to the public generally. Any violations of the provisions of this section shall be a misdemeanor and every such contract or agreement shall be void.

Such prohibition of a free transportation shall not apply to policemen or firemen in uniform; nor shall any free service to city officials, heretofore provided by any franchise or ordinance, be affected by this section.

Hist. C. L. 162:61; '11, c. 82, part of Sec. 22, p. 300.

SEC. 4233. *Corruption a misdemeanor.* Any officer or employee of such city, who, by solicitation or otherwise, shall exert his influence, directly or indirectly, to influence other officers or employees of such city to adopt his political views or to favor any particular officer or candidate for office, or who shall, in any manner, contribute money, labor or other valuable thing to any person for election purposes, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not exceeding \$300, or by imprisonment in the county jail not exceeding 30 days.

Hist. C. L. 162:62; '11, c. 82, part of Sec. 22, p. 301.

ARTICLE IV.

INITIATIVE AND REFERENDUM.

Cited: Perrault v. Robinson (1916) 29 I. 267, 158 P. 1074.

SEC. 4234. *Direct legislation authorized.* The people of such city, in addition to the method of legislation, hereinbefore provided, shall have power of direct legislation by the initiative and the referendum.

Hist. C. L. 162:63; '11, c. 82, Sec. 23, p. 301.

SEC. 4235. *Initiative: How exercised.* The initiative shall be exercised in the manner prescribed in the following sections, 4236 to 4241, inclusive.

Hist. C. L. 162:64; '11, c. 82, Sec. 24, p. 301; phraseology slightly changed.

Cross ref. Express reference to this section: Compulsory referendum; 42-42.

Cited: (In dis. op.) Swain v. Fritchman (1912) 21 I. 783, 809, 125 P. 319.

SEC. 4236. *Same: Petition.* A petition signed by qualified electors of the city, accompanied by the proposed legislation or measure in the form of a proposed ordinance, and requesting that such ordinance be submitted to a vote of the people if not passed by the council, shall be filed with the clerk.

Hist. C. L. 162:65; '11, c. 82, part of Sec. 24a, p. 301.

SEC. 4237. *Form of Petition.* Such petitions shall be substantially as follows:

We, the undersigned, being qualified electors of the city of....., state of Idaho, hereby declare that we have read, or heard read at length, section by section, the proposed ordinance or measure hereto attached, and fully understand its contents, meaning and believe it should become a law of the city for the following reasons: (here state the reasons in not more than 200 words). That we hereby request that such ordinance or measure be submitted to a vote of the people if not passed by the council.

(Signed).....

Street and No.....

Hist. C. L. 162:66; '11, c. 82, part of Sec. 24a, p. 301.

SEC. 4238. *Regulations concerning initiative petition.* Any number of copies of the petition and ordinance thereto attached may be circulated at the same time and all shall be considered as one petition, but each petition must be verified by at least one qualified elector, which verification shall state that affiant knows that all of the persons whose names are signed to the petition are qualified electors of the city, and that each signer, prior to placing his name upon the petition, read, or heard read at length, section by section, the proposed ordinance or measure thereto attached. Such verification may be made before any notary public.

Hist. C. L. 162:67; '11, c. 82, part of Sec. 24a, p. 301.

SEC. 4239. *Correction of petition: Submission to council.* Within 10 days from date of filing such petition, the city clerk shall examine and from the voters registered ascertain whether or not said petition is signed by the requisite number of qualified electors, and if necessary, the council shall allow him extra help for that purpose; and he shall attach to the said petition his certificate showing the result of said

examination. If there is any doubt in the mind of the clerk as to the sufficiency form or legality of the proposed measure or ordinance, said clerk shall forthwith take it to the city attorney, who shall, within two days, transmit to the clerk a written opinion on the same, and if such opinion is adverse, he shall set forth therein the reasons and necessary changes to be made to make it proper and legal in form. If, by the clerk's certificate, the petition is shown to be insufficient, it may be amended within 10 days from the date of said certificate, and it shall be the duty of the clerk to notify at once, in writing, the person presenting the petition and ordinance of its or their insufficiency. If amended within said time, the clerk shall, within 10 days after such amendment, make like examination of the amended petition, and if his certificate shall show the same to be insufficient, it shall be returned to the person filing the same, without prejudice, however, to the filing of a new petition to the same effect. If the petition, or amended petition, shall be deemed sufficient, the clerk shall submit the same to the council at its next regular meeting.

Hist. C. L. 162:68; '11, c. 82, part of Sec. 24a, p. 302.

SEC. 4240. *Duty of council on large petition.* If such petition is signed by qualified electors equal to 25 per centum of the total number of votes cast for mayor at the last preceding general municipal election, the council, within 20 days after the attachment of the clerk's certificate to the accompanying petition, except as otherwise provided in this chapter, shall either pass such ordinance without alteration or call a special election and submit it to popular vote at such special election, which must be held within 40 days after the date of the ordering thereof: *Provided, however,* That, if any other municipal election is to be held within 90 days after the filing of the petition, said proposed ordinance shall be submitted without alteration to be voted upon at such other election.

Hist. C. L. 162:69; '11, c. 82, Sec. 24b, p. 302.

SEC. 4241. *Duty of council on small petition.* If such petition is signed by qualified electors in number equal to 10 and less than 25 per centum of the total number of votes cast for mayor at the last preceding general municipal election and the said proposed ordinance is not passed by the council without alteration, before the commencing of publication of notice of the next municipal election, it shall be

submitted to popular vote at such election: *Provided, however*, That such petition must be filed at least 30 days before the date fixed for such election.

Hist. C. L. 162:70; '11, c. 82, Sec. 24c, p. 303.

SEC. 4242. *Compulsory referendum.* If, prior to the date when any ordinance shall take effect, a petition, which petition and its requirements shall be substantially as required by the provisions of sections 4235 to 4239 of this chapter, with the necessary changes made therein to meet the needs of this section, signed by qualified electors equal in number to 25 per centum of the entire vote cast for mayor at the last preceding general municipal election, shall be filed with the clerk protesting against the enactment of such ordinance, it shall, by the filing of such petition, be suspended from taking effect. Immediately upon the filing of petition the clerk shall certify the number of votes cast for mayor at the last preceding general municipal election, and the number of signers of such petition, and shall present such certificate, petition and proposed ordinance to the council at its next meeting. Thereupon the council shall immediately reconsider such ordinance, and, if it do not entirely repeal the same, shall submit it to popular vote at the next municipal election: the council, in its discretion, may call a special election for that purpose; and such ordinance shall not take effect unless the majority of the qualified electors voting thereon at such election shall vote in favor thereof.

Hist. C. L. 162:71; '11, c. 82, Sec. 25, p. 303; reference to "section 17" of original act was clearly an error for "section 24" See dis. op. of Sullivan, J., Swain v. Fritchman (1911) 21 I. 783, 808, 125 P. 319. The reference has been changed to "sections 4235 to 4239 of this chapter," the present designations of that portion of section 24 of the original act to which reference was intended.

Court remedies against council: The council may be compelled in a proper case by mandamus to hold a referendum election and may be restrained by writ of prohibition from holding an unauthorized election. (Budge, J., dissents). Perrault v. Robison (1916) 29 I. 267, 158 P. 1074.

Ordinances not subject to referendum: Ordinances making the tax levy and appropriations, 4296, are not subject to the referendum provisions of this and the following section. (Sullivan, J., dissents) Swain v. Fritchman (1912) 21 I. 783, 125 P. 319.

When the council has acted upon a petition under Sec. 6825, relating to opening of shows on Sunday, by the passage of an appropriate ordinance, the referendum provision of the commission form of government law does not apply thereto. Perrault v. Robinson (1916) 29 I. 267, 158 P. 1074.

SEC. 4243. *Voluntary referendum.* The council, of its own motion, may submit to popular vote, for adoption or rejection, at any election any proposed ordinance or measure in the same manner and with the same force and effect as provided in this chapter for their submission on petition.

Hist. C. L. 162:72; '11, c. 82, Sec. 26, p. 303.

Cross ref. See preceding section and its annotations.

SEC. 4244. *Form of ballots.* The ballots used when voting upon such proposed and referred ordinances or measures shall be as above provided in this chapter for voting upon ordinances or measures.

Hist. C. L. 162:73; '11, c. 82, Sec. 27, p. 303.

SEC. 4245. *Notice of election.* The clerk shall publish every proposed or referred ordinance at least twice in the official newspapers of such city before the date of the election at which such proposition or ordinance is to be voted upon; and shall give such other notices and do such other things relative to such election as are required by the provisions of this chapter, and by law, for general municipal elections.

Hist. C. L. 162:74; '11, c. 82, Sec. 28, p. 303.

SEC. 4246. *Majority vote effective.* If a majority of the electors of such city, voting on any proposed ordinance or measure, shall vote in favor thereof, the same shall thereupon, or at the time fixed therein, become effective as a law of the city, or as a mandatory order to the council.

Hist. C. L. 162:75; '11, c. 82, Sec. 29, p. 304.

SEC. 4247. *When plurality vote decisive.* If the provisions of two or more ordinances approved at the same election are inconsistent, the ordinance receiving the highest vote shall prevail.

Hist. C. L. 162:76; '11, c. 82, Sec. 30, p. 304.

SEC. 4248. *Direct legislation necessary to repeal.* No ordinance which has been adopted by popular vote, under the provisions of this chapter, shall be repealed or amended, except by popular vote upon the same.

Hist. C. L. 162:77; '11, c. 82, Sec. 31, p. 304.

SEC. 4249. *More than one question submitted: Prohibition on time of election.* Any number of proposed ordi-

nances may be voted upon at the same election in accordance with the provisions of this chapter, but there shall not be held, under the initiative and referendum herein provided for, more than one special election in any period of six months for such purpose.

Hist. C. L. 162:78; '11, c. 82, Sec. 32, p. 304.

SEC. 4250. *Additional regulations by council.* The council, by ordinance, may make other and further regulations to carry out provisions of this chapter, not inconsistent herewith.

Hist. C. L. 162:79; '11, c. 82, Sec. 33, p. 304.

ARTICLE V.

RECALL.

Comp. leg. Similar laws in other states. *Hodges v. Tucker*, (1914) 25 I. 563, 576, 138 P. 1139.

Recall exclusive remedy for removal of officer: The recall of officers provided by this article is exclusive of any other remedy provided prior to its enactment. *Hodges v. Tucker* (1914) 25 I. 563, 138 P. 1139.

This law supersedes or suspends Sec. 7459 providing summary proceedings for removal of officers. *Ib.*

SEC. 4251. *Recall authorized.* The holder of any elective office, whether elected or appointed thereto, may be removed therefrom by recall: *Provided*, That no recall petition shall be filed against any officer until he has actually held his office for at least three months.

Hist. C. L. 162:80; '11, c. 82, Sec. 34, p. 304.

SEC. 4252. *Initiation of recall.* The recall shall be instituted by filing with the clerk a verified, written petition requesting such removal, signed by qualified electors of the city, and stating the residence of each signer thereto.

Hist. C. L. 162:81; '11, c. 82, Sec. 35, p. 304.

SEC. 4253. *Form of recall petition.* The form and contents of the petition shall be substantially as follows:

To the council of _____:

We, the signers hereto, qualified electors of the city of _____, request the removal of (name of incumbent of elective office sought to be removed to be inserted) from the office of (name of office to be inserted). (Here there shall be inserted in not more than 200 words the reasons for demanding the recall of the officer.)

Name .

Residence (street and number).

State of Idaho,

County of..... SS.

(Name of petitioner to be inserted here.)

....., being first duly sworn, says that he is one of the signers of the foregoing petition; that the statements made therein are true, and that each signature appended thereto is the genuine signature of the person whose name it purports to be, as he verily believes.

(Petitioner sign here.)

Subscribed and sworn to before me this.....day of....., 19.....

Notary public, residing at....., Idaho.

Hist. C. L. 162:82; '11, c. 82, Sec. 36, p. 304.

SEC. 4254. *Regulations concerning recall petition.* The petition may consist of one or more papers circulated separately, and the signatures thereto may be upon the paper or papers containing the formal petition, or upon other papers attached thereto. The verification may be made by one or more petitioners, and the several parts of the petition may be verified separately and by different persons. All papers and documents comprising a single petition shall be filed with the clerk on the same day, and the clerk shall notify immediately, in writing, the officer sought to be removed.

Hist. C. L. 162:83; '11, c. 82, Sec. 37, p. 305.

SEC. 4255. *Incumbent's objection to sufficiency.* Within 10 days after the filing of the petition, the incumbent whose removal was requested shall file, in writing, with the clerk his objections, if any, to the sufficiency of such petition, and he can not thereafter contest its sufficiency upon any objection not so filed. Such objection shall be specific, and shall set forth the reasons for each objection, and no general objection to the qualifications of the signers of such petition shall be sufficient. If the result of the election be adverse to the incumbent, all defects in the petition shall be cured thereby.

Hist. C. L. 162:84; '11, c. 82, Sec. 38, p. 305.

SEC. 4256. *Presentation of petition to council.* Within two days after date of filing of the petition, the clerk shall certify the number of votes cast for mayor at the last general municipal election, and the number of signers to such

petition, and present such petition and certificate to the council at its next regular meeting.

Hist. C. L. 162:85; '11, c. 82, Sec. 39, p. 305.

SEC. 4257. *Amendment of petition.* If the petition be insufficient in any respect it may be withdrawn by the person filing it, and amended as many times as desired, within 40 days of the original filing. The duty of the clerk shall be the same with respect to any amended petition as upon the original petition.

Hist. C. L. 162:86; '11, c. 82, Sec. 40, p. 305.

SEC. 4258. *Duty of council on large petition. Special recall election.* If a petition be signed by qualified electors in number equal to 35 per centum of the total number of votes cast for mayor at the last preceding general municipal election, the council within seven days after the final certification by the clerk, unless the incumbent sought to be removed resign within five days after such final certifications, shall order a special election to be held on a date fixed in such order, not less than 40 days, nor more than 50 days from the date of such final certification: *Provided*, That if any other municipal election is appointed to be held within 90 days from said final certification, the recall election shall be held at the same time as such other election.

Hist. C. L. 162:87; '11, c. 82, Sec. 41, p. 306.

SEC. 4259. *Duty of council on small petition.* If the petition is signed by qualified electors in number equal to 20 per centum and less than 35 per centum of the total number of votes cast at the last preceding general municipal election, the council, within seven days after the final certification by the clerk, unless the incumbent sought to be removed resign within five days after such final certification, shall order and fix the election upon the date of the next municipal election: *Provided*, That not less than 90 days shall elapse between the date of the final certification of the recall petition by the clerk and the said municipal election.

Hist. C. L. 162:88; '11, c. 82, Sec. 42, p. 306.

SEC. 4260. *Publication of reasons for recall and incumbent's reply.* In the published call for any election at which the recall of any such officer is used under the provisions of this chapter there shall be printed in not more than 200 words the reason for demanding the recall of the officer, as

set forth in the recall petition, and in not more than 200 words the officer sought to be recalled may justify his course in office, provided that such officer file with the mayor such statement within two days after receiving notice of the filing of such recall petition.

Hist. C. L. 162:89; '11, c. 82, Sec. 43, p. 306.

SEC. 4261. *Incumbent a candidate.* At such election the incumbent shall be a candidate without nomination unless he file written notice to the contrary with the clerk before the ballots are printed.

Hist. C. L. 162:90; '11, c. 82, Sec. 44, p. 306.

SEC. 4262. *Application of municipal election laws.* The procedure for nominations and election shall be the same as in general municipal elections.

Hist. C. L. 162:91; '11, c. 82, Sec. 45, p. 306.

SEC. 4263. *Effect of successful recall: Expiration of term.* If the incumbent shall not be reelected, his tenure of office shall terminate upon the determination of the result of the election by the canvassing board. His successor shall qualify for office immediately, thereafter, and shall hold office for the unexpired term.

Hist. C. L. 162:92; '11, c. 82, Sec. 46, p. 306.

SEC. 4264. *Same: Ineligibility of recalled officer.* An officer, removed from office by recall election, or who shall resign from such office pending recall proceedings against him, shall not be appointed to any city office or employment within two years after such removal or resignation.

Hist. C. L. 162:93; '11, c. 82, Sec. 47, p. 306.

Additional penalty: This section prescribes a penalty in addition to ouster. *Hodges v. Tucker* (1914) 25 I. 563, 138 P. 1139.

SEC. 4265. *Joinder in recall....* Two or more elective officers may be joined in one petition for removal.

Hist. C. L. 162:94; '11, c. 82, Sec. 48, p. 307.

SEC. 4266. *Effect of vacancy pending election.* If a vacancy occur in the office after a removal election has been ordered, the election shall nevertheless be held as in this chapter provided.

Hist. C. L. 162:95; '11, c. 82, Sec. 49, 307.

SEC. 4267. *Additional regulations by council.* The council may, by ordinance, make such further regulations as may be necessary to carry out the provisions of this chapter rela-

tive to the recall of an official or officials.

Hist. C. L. 162:95; '11, c. 82, Sec. 50, p. 307.

ARTICLE VII.

MISCELLANEOUS PROVISIONS.

SEC. 4297. *Abandonment of commission form.* Any city which shall have operated for more than six years, under the provisions of this chapter, may abandon such organization hereunder, and accept the provisions of the general law of the state then applicable to cities of its population, or if now organized under special charter, may resume said special charter as follows:

Upon the petition of not less than 25 per centum of the electors of such city a special election shall be called at which the following proposition only shall be submitted:

Shall the city of (name of city) abandon its organization under the act of the eleventh session of the legislature of Idaho and become a city under the general law governing cities of like population, or if now organized under special charter, shall it resume said special charter.

If a majority of the votes cast at such special election be in favor of such proposition, the officers elected at the next succeeding biennial election shall be those then prescribed by the general law of the state for cities of like population, or prescribed by special charter if such city has been incorporated under special charter at the time of adopting the provisions of this chapter; and upon qualification of such officers, such city shall again become organized under such general law of the state, or special charter, as the case may be; but such change shall not in any manner or degree affect the property, rights or liabilities of such city, but shall merely extend to such change in its form of government.

The sufficiency of such petition shall be determined, the election ordered and conducted and the results declared generally as provided by the provisions of this chapter, in so far as the provisions thereof are applicable.

Hist. C. L. 162:126; '11, c. 82, Sec. 75, p. 314.

SEC. 4298. *Petitions: Signers.* Petitions provided for in this chapter shall be signed by none but the legal voters of the city. Each petition shall contain, in addition to the names of the petitioner's residence, his age and length of

residence in the city. It shall also be accompanied by the affidavit of one or more legal voters of the city stating that the signers thereof were, at the time of signing, legal voters of said city, and the number of signers at the time the affidavit was made.

Hist. C. L. 162:127; '11, c. 82, Sec. 76, p. 314.

CHAPTER XXIV.

COMPILED STATUTES, CH. 174.

CITY MANAGER PLAN OF GOVERNMENT.

SEC. 4299. *Cities of 2500 or over may adopt...* Any city within the State of Idaho, organized under the general laws of the state or under special charter or under a general incorporation act, now or hereafter having as shown by the last preceding state or national census, a population of 2500 persons or over that number, may adopt the city manager plan of government as herein set forth by proceedings as hereinafter provided. The form of government provided in this chapter, to be known as the city manager plan, shall consist of a board of commissioners of five or more citizens, according to the population of the municipality as determined by the last preceding census.

Hist. C. L. 163:1; '17, c. 79, Sec. 1, and part of Sec. 2, p. 246.

SEC. 4300. *Petition for adoption.* Upon petition of electors equal in number to 25 per centum of the vote cast for all candidates for mayor at the last preceding general city election of any such city, the mayor shall, by proclamation, issued within 10 days after the filing of such petitions with the city clerk of such city, submit the question of adopting the city manager plan of city government as herein provided, at a special election to be held at a time specified in such proclamation which shall not be less than 60 days or more than 90 days after such petition is filed.

Hist. C. L. 163:2; '17, c. 79, part of Sec. 2, p. 246.

SEC. 4301. *Election.* At such election the proposition to be submitted to the electors shall be: "Shall the city of.....adopt the city manager plan of municipal government, as set forth in Chapter 174, Compiled Statutes of Idaho?" An election thereupon shall be conducted, the vote canvassed and the results declared in the same manner as provided by law in respect to other city elections.

Hist. C. L. 163:3; '17, c. 79, Sec. 3, p. 246.

SEC. 4302. *Board of Commissioners: Election.* If the majority of the votes cast at such election shall be in favor of such plan, such city shall thereupon proceed to the election of a board of commissioners of five or more citizens, according to the population of such city, and one of whom shall be elected by the other members of said board as the chairman thereof. Said commissioners shall be nominated and elected in the first instance, one from each councilmanic ward or such other existing districts of said city as may have been established for the election of the members of the city council or other governing body. After the first election said commissioners shall be nominated and elected either at large or from such districts as shall be established by ordinance.

Hist. C. L. 163:4; '17, c. 79, Sec. 4, p. 246.

SEC. 4303. *Size and term of board: Vacancies.* The number of commissioners shall be in proportion to the population of the municipality, as determined by the last preceding federal census, as follows: A municipality having not more than 15,000 inhabitants, five; more than 15,000 and not more than 50,000 inhabitants, seven; more than 50,000 inhabitants, nine. All commissioners shall serve for a term of four years and until their successors are elected and have qualified, except that at the first election in municipalities having five commissioners the candidates having the three highest number of votes shall serve for four years, the other two commissioners shall serve for two years, and in municipalities having more than five commissioners the majority of commissioners having the highest number of votes shall serve for a period of four years and the others for a period of two years.

Vacancies in the board shall be filled by the board for the remainder of the unexpired term, but any vacancy resulting from a recall election shall be filled in the manner provided for in such cases.

Hist. C. L. 163.5; '17, c. 79, Sec. 5, p. 247.

SEC. 4304. *Meetings of board.* The board shall meet at the usual place for holding such meetings, at 10 o'clock a. m. on the 1st day of January after its election, at which time the newly elected commissioners shall assume the duties of their office. Thereafter the board shall meet in regular session at least twice each month at such times and places as shall be fixed by ordinance. The clerk shall call special sessions of the board upon written request of the chairman or

of any two members. Any such requests shall state the subjects to be considered at such special meeting and no other subjects shall be there considered.

Hist. C. L. 163:6; '17, c. 79, Sec. 6, p. 247.

SEC. 4305. *Signing of ordinances.* Every ordinance or resolution passed by the board shall be signed by the chairman or two members, filed with the clerk within two days and by him recorded.

Hist. C. L. 163:7; '17, c. 79, Sec. 7, p. 248.

SEC. 4306. *Powers of the board.* Said board shall constitute the governing body of such city with power to pass ordinances, adopt regulations, appoint a chief administrative officer, to be known as the city manager, approve all appointments made by the city manager, except as otherwise provided in this chapter, fix all salaries, appoint a civil service commission and all boards of commissioners created by ordinance, and to remove for cause and after hearing, by a majority vote of all members, any officer or employee of the municipality, unless otherwise provided by such civil service regulations as may be adopted. The powers conferred upon municipalities by the constitution of Idaho, and any additional powers which have been or may be conferred upon municipalities by the legislature, or by the provisions of this chapter, shall be exercised by the board unless the exercise of such powers shall have been expressly conferred upon some other authority of the municipality or reserved to the people thereof.

Hist. C. L. 163:8; '17, c. 79, Sec. 8, p. 248.

SEC. 4307. *City manager.* The board shall appoint a city manager who shall be the administrative head of the municipal government under the direction and supervision of such board and who shall hold office at the pleasure of the majority of the members thereof. Before entering upon the duties of his office such city manager shall take the official oath for the support of the government and the faithful performance of his duties, and shall execute a bond in favor of the municipality in such sum as may be fixed by the board.

Hist. C. L. 163:9; '17, c. 79, Sec. 9, p. 248.

SEC. 4308. *Duties of city manager.* The duties of the city manager shall be:

1. To have general supervision over the business of the municipality.

2. To see that the laws and ordinances are faithfully executed.

3. To attend to all meetings of the board at which his attendance may be required by that body.

4. To recommend for adoption to the board such measures as he may deem necessary or expedient.

5. To make such appointments of employees of the municipality as are not otherwise provided for, subject to the provisions of this chapter and to such civil service regulations as may be adopted.

6. To prepare and submit to the board such reports as may be required by that body, or as he may deem advisable to submit.

7. To keep the board fully advised of the financial condition of the municipality and its future needs.

8. To prepare and submit to the board a tentative budget for the next fiscal year.

9. To perform such other duties as the board may determine by ordinance or resolution.

Hist. C. L. 163:10; '17, c. 79, Sec. 10, p. 248.

SEC. 4309. *Administrative departments.* The executive and administrative powers, authority and duties or cities coming under the provisions of this chapter shall be divided into five departments as follows: Public affairs, accounts and finances, public safety, streets and public improvements, parks and public property. The board shall have authority to create such other department offices and employments as may be found necessary.

Hist. C. L. 163:11; '17, c. 79, Sec. 11, p. 249.

SEC. 4310. *Restrictions on submitting proposition to vote.* The proposal to adopt said city manager plan as provided in this chapter shall not be submitted less than 90 days before a regular municipal election. If said plan is not adopted at the special election so-called and held, the question of adopting the same shall not be resubmitted to the voters of said city within two years thereafter.

Hist. C. L. 163:12; '17, c. 79, Sec. 12, p. 249.

SEC. 4311. *Discontinuance of city manager plan: Petition: Election.* Any city which shall have operated for more than six years, under the provisions of this chapter, may abandon such organization hereunder, and accept the

provisions of the general laws of the state then applicable to cities of its population, or if now organized under special charter, may resume said special charter as follows: Upon petition of not less than 25 per centum of the electors of such city, a special election shall be called at which the following proposition only shall be submitted: "Shall the city of abandon its organization under the city manager plan as provided in chapter 174 Compiled Statutes of Idaho, and become a city under the general law governing cities of its population, or if now organized under special charter, shall it resume said special charter?"

If a majority of the votes cast at such special election be in favor of such proposition, the officers elected at the next succeeding bienial election shall be those then prescribed by the general law of the state for cities of like population, or prescribed by special charter if such city had been incorporated under special charter at the time of adopting the provisions of this chapter; and upon qualification of such officers, such city shall again become organized under such general law of the state, or special charter, as the case may be; but such change shall not in any manner or degree affect the property rights or liabilities of such city, but shall merely extend to such change in its form of government. The sufficiency of such petition shall be determined, the election ordered and conducted, and the results declared generally as provided by the provisions of this chapter, in so far as the provisions thereof are applicable.

Hist. C. L. 163:13; '17, c. 79, Sec. 13, p. 249.

SEC. 4312. *Petitions: Special requirements.* Petitions provided for in this chapter shall be signed by none but the legal voters of the city. Each petition shall contain, in addition to the names of the petitioner's residence, his age and length of residence in the city. It shall also be accompanied by the affidavit of one or more legal voters of the city stating that the signers thereof were, at the time of signing, legal voters of said city, and the number of signers at the time the affidavit was made.

Hist. C. L. 163:14; '17, Sec. 14, p. 250.

CHAPTER XXV.

COMPILED STATUTES, CH. 298.

CRIMES AGAINST THE ELECTIVE FRANCHISE.

SEC. 8096. *Official Neglect or Malfeasance.* Every per-

son charged with the performance of any duty, under the provisions of any law of this State relating to elections, who willfully neglects or refuses to perform it, or who, in his official capacity, knowingly and fraudulently acts in contravention or violation of any of the provisions of such laws, is, unless a different punishment for such acts or omissions is prescribed by this Code, punishable by fine not exceeding one thousand dollars, or by imprisonment in the State prison not exceeding five years, or by both.

Hist. C. L. 6354.

SEC. 8097. *Refusal to be sworn or to answer questions.* Every person who, after being required by the board of judges at any election, refuses to be sworn, or who, after being sworn, refuses to answer any pertinent question propounded by such board, touching his right, or the right of any other person, to vote, is guilty of a misdemeanor.

Hist. C. L. 6355.

SEC. 8098. *Illegal voting or interference with election.* Every person not entitled to vote, who fraudulently votes, and every person who votes more than once at any one election, or knowingly hands in two or more tickets folded together, or changes any ballot after the same has been deposited in the ballot box, or adds, or attempts to add, any ballot to those legally polled at any election, either by fraudulently introducing the same into the ballot box before or after the ballots therein have been counted or adds to or mixes with, or attempts to add to or mix with, the ballots lawfully polled, other ballots, while the same are being counted or canvassed, or at any other time, with intent to change the result of such election; or carries away or destroys, or attempts to carry away or destroy, any poll lists, or ballots, or ballot box, for the purpose of breaking up or invalidating such election, or wilfully detains, mutilates, or destroys any election returns, or in any manner so interferes with the officers holding such election or conducting such canvass, or with the voters lawfully exercising their rights of voting at such election, as to prevent such election or canvass from being fairly held and lawfully conducted, is guilty of a felony.

Hist. C. L. 6356.

SEC. 8099. *Attempting to vote when not qualified, or to Repeat.* Every person not entitled to vote, who fraudulently attempts to vote, or who, after being entitled to vote,

attempts to vote more than once at any election, is guilty of a misdemeanor.

Hist. C. L. 6357.

SEC. 8100. *Procuring illegal votes.* Every person who procures, aids, assists, counsels or advises another to give or offer his vote at any election, knowing that person is not qualified to vote, is guilty of a misdemeanor.

Hist. C. L. 6358.

SEC. 8101. *Officers attempting to change result.* Every officer or clerk of election who aids in changing or destroying any poll list, or in placing any ballots in the ballot box, or taking any therefrom, or adds, or attempts to add, any ballots to those legally polled at such election, either by fraudulently introducing the same into the ballot box before or after the ballots therein have been counted, or adds to or mixes with, or attempts to add to or mix with the ballots polled any other ballots, while the same are being counted or canvassed, or at any other time, with intent to change the result of such election, or allows another to do so, when in his power to prevent it, or carries away or destroys, or knowingly allows another to carry away or destroy, any poll list, ballot box, or ballots lawfully polled, is guilty of a felony.

Hist. C. L. 6359.

SEC. 8102. *Attempt of officer to ascertain vote.* Every officer, judge, or clerk of an election, who, previous to putting the ballot of an elector in the ballot box, attempts to find out any name on such ballot, or who opens, or suffers the folded ballot of any elector which has been handed in, to be opened or examined previous to putting the same into the ballot box, or who makes, or places any mark or device on any folded ballot, with a view to ascertain the name of any person which such officer, judge, or clerks has fraudulently or illegally discovered to have been voted for by such elector, is punishable by fine of not less than fifty nor more than five hundred dollars.

Hist. C. L. 6360.

SEC. 8103. *Forging or counterfeiting returns.* Every person who forges or counterfeits returns of an election, purposing to have been held at precinct, town, or ward where no election was in fact held, or wilfully substitutes

forged or counterfeits returns of election in the place of the true returns for a precinct, town, or ward where an election was actually held, is guilty of a felony.

Hist. C. L. 6361.

SEC. 8104. *Adding to or subtracting from votes.* Every person who wilfully adds to or subtracts from the votes actually cast at an election, in any returns, or who alters such returns is guilty of a felony.

Hist. C. L. 6362.

SEC. 8105. *Aiding and abetting crimes.* Every person who aids or abets in the commission of any of the offenses mentioned in the four preceding sections, is punishable by imprisonment in the county jail for the period of six months, or in the State prison not exceeding two years.

Hist. C. L. 6363.

SEC. 8106. *Intimidation, corruption and frauds.* Every person who, by force, threats, menaces, bribery, or any corrupt means, either directly or indirectly attempts to influence any elector in giving his vote, or to deter him from giving the same, or attempts by any means whatever, to awe, restrain, hinder, or disturb any elector in the free exercise of the right of suffrage, or furnishes any elector wishing to vote, who cannot read, with a ticket, informing or giving such elector to understand that it contains a name written or printed thereon different from the name which is written or printed thereon, or defrauds any elector at any such election, by deceiving and causing such elector to vote for a different person, for any office, than he intended or desired to vote for; or who, being officer, judge, or clerk of any election, while acting as such, induces, or attempts to induce, any elector, either by menace or reward or promise thereof, to vote differently from what such elector intended or desired to vote, is guilty of a misdemeanor.

Hist. C. L. 6364.

SEC. 8107. *Riotous conduct and interference with election.* Any person who wilfully disturbs, or is guilty of any riotous conduct at or near, any election place or voting precinct with intent to disturb the same, or interferes with the access of the electors to the polling place, or in any manner, with the free exercise of the election franchise of the voters, or any voter there assembled, or disturbs or interferes with

the canvassing of the votes, or with the marking of the returns, is guilty of a misdemeanor.

Hist. C. L. 6365.

SEC. 8108. *Betting on elections.* Every person who makes, offers, or accepts any bet or wager upon the result of any election, or upon the success or failure of any person or candidate, or upon the number of votes to be cast, either in the aggregate or for any particular candidate, or upon the vote to be cast by any person, is guilty of a misdemeanor.

Hist. C. L. 6366.

SEC. 8109. *Offenses not otherwise provided for.* Every person who wilfully violates any of the provisions of the laws of this State relating to elections is, unless a different punishment for such violation is prescribed by law, punishable by fine not exceeding one thousand dollars, or by imprisonment in the State prison not exceeding five years, or by both.

Hist. C. L. 6367.

SEC. 8110. *Tampering with certificates of nomination or Ballots.* No person shall falsely make, or make oath to, or fraudulently deface, or fraudulently destroy, any certificate of nomination, or any part thereof, or file, or receive for filing, any certificate, of nomination, or letter of withdrawal, knowing the same or any part thereof to be falsely made, or suppress any certificate of nomination which has been duly filed, or any part thereof, or wilfully delay the delivery of all ballots, or forge or falsely make the official endorsement, on the ballot or wilfully destroy any ballot. Every person violating any of the provisions of this section shall be deemed guilty of a felony, and, upon conviction thereof in any court of competent jurisdiction, shall be punished by imprisonment in the penitentiary, for a period of not less than one year nor more than five years.

Hist. C. L. 6369.

SEC. 8111. *Destroying and defacing supplies.* No person shall during the election, remove or destroy any of the supplies or conveniences placed in the booths or compartments for the purpose of enabling the voter to prepare his ballot, or prior to or on the day of, election, wilfully deface or destroy any list of candidates posted in accordance with the provisions of Title 4 of the Political Code concerning elections. No person shall during an election, tear down or deface the cards printed for the instruction of voters. Every

person wilfully violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and, upon conviction thereof in any court of competent jurisdiction, shall be fined in any sum not exceeding one hundred dollars.

Hist. C. L. 6370.

Cross Reference: Political Code, Title 4, Sec. 488, Et. Seq.

SEC. 8112. *Electioneering.* No officer of election shall do any electioneering on election day. No person shall do any electioneering on election day within any polling place, or any building in which an election is being held, or within one hundred feet thereof, nor obstruct the doors or entries thereto, or prevent free ingress to, and egress from, said building. Any election officer, sheriff, constable or other peace officer is hereby authorized, and it is hereby made the duty of any such officer, to arrest any person violating any of the provisions of this section, and such offender shall be punished by a fine not exceeding one hundred dollars, or less than twenty-five dollars.

Hist. C. L. 6371.

SEC. 8113. *Attempt to influence votes.* No person shall attempt to influence the vote of any elector by means of a promise or a favor, or by means of violence or threats of violence, or threats of withdrawing custom or dealing in business or trade, or enforcing the payment of a debt, or discharging from employment, or bringing a suit or criminal prosecution, or any other threat or injury to be inflicted by him, or by any other means.

Hist. C. L. 6372.

SEC. 8114. *Bribery of electors.* No person shall in any way offer a bribe to an elector to influence his vote.

Hist. C. L. 6373.

SEC. 8115. *Fraudulent permission of registration.* Any registry agent, or other person, who in any manner shall wilfully or corruptly permit any person not entitled to registration or to a certificate of registration, to be registered or have a certificate of registration, or who delays or fails to deliver the certified copies of the official register and the check list to the judges of election as required by law, or who permits any person to register after the date on which the registration books close, or who shall otherwise wilfully or corruptly violate any of the provisions of the law governing elections, the penalty for which is not herein specially prescribed, shall be punished for each and every offense by

imprisonment in the penitentiary for a term of not less than one year nor more than five years, or by a fine of not less than one hundred nor more than two thousand dollars, or by both such fine and imprisonment in the discretion of the court.

Hist. C. L. 6374.

SEC. 8116. *Illegal registration by voter.* Any person who shall willfully cause, or endeavor to cause, his name to be registered in any other election district than that in which he resides, or will reside prior to the day of the next ensuing election, except as herein otherwise provided, and any person who shall cause, or endeavor to cause, his name to be registered, knowing that he is not a qualified elector, and will not be a qualified elector on or before the day of the ensuing election, in the election district in which he causes or endeavors to cause such registry to be made, and any person who shall induce, aid or abet any one in the commission of either of the acts in this section enumerated and described, shall be fined not less than fifty dollars nor more than five hundred dollars, or be confined in the county jail for not less than one month nor more than six months, or both.

Hist. C. L. 6375.

SEC. 8117. *Placing placards in booths.* Any person or officer of election who shall put, or permit to be put, into a voting booth, any placard, notice, or device except the sample ballots and cards of instructions as by law provided, intended or likely to call the attention of the voter to any candidate, or to urge the voter to vote for any particular candidate, or shall put, or allow anything to be put, into such booths for the use or comfort of the voter whereby the claims of any candidate are urged upon the voter, either directly or indirectly, shall be imprisoned in the county jail not to exceed three months, or fined not to exceed five hundred dollars, or both.

Hist. C. L. 6376.

APPENDIX.

- A. Congressional Districts.
- B. Legislative Apportionment.
- C. Elective City Officers.

COMPILED STATUTES, CH. VI.
CONGRESSIONAL DISTRICTS.

SEC. 66. *Number of congressional districts.* For the election of representative in congress, the State of Idaho is divided into two congressional districts.

Hist. C. L. 6:1; '17, c. 121, Sec. 1, p. 408, rewritten.

SEC. 67. *First congressional district.* The first congressional district comprises the counties of Adams, Benewah, Boise, Bonner, Boundary, Canyon, Clearwater, Custer, Gem, Idaho, Kootenai, Latah, Lemhi, Lewis, Nez Perce, Payette, Shoshone, Valley, Washington and counties hereafter created therefrom.

Hist. C. L. 6:2; '17, c. 121, Sec. 2, p. 408, rewritten: new counties inserted and all counties arranged alphabetically.

SEC. 68. *Second congressional district.* The second congressional district comprises the counties of Ada, Bannock, Bear Lake, Bingham, Blaine, Bonneville, Butte, Camas, Cassia, Elmore, Franklin, Fremont, Gooding, Jefferson, Lincoln, Madison, Minidoka, Oneida, Owyhee, Power, Teton, Twin Falls and counties created therefrom.

Hist. C. L. 6:3; '17, c. 121, Sec. 2, p. 408, rewritten; new counties inserted and all counties arranged alphabetically.

SEC. 69. *Residence of candidates within district.* All candidates for election as representatives in congress shall be residents of the congressional district from which they seek such election.

Hist. C. L. 6:4; '17, c. 121, Sec. 4, p. 409.

APPENDIX B.
COMPILED STATUTES CH. IV.
LEGISLATIVE DISTRICTS.

Note: This chapter, enacted '17, c. 165, p. 493, heretofore embodied in one section, has been divided into sections by the commissioner and a few verbal changes made. Previous apportionment acts are: '05, p. 430, Sec. 1; '07, p. 472, Sec. 1, 2; R. C., Sec. 25; '09, p. 106; H. B., 283; '11, c. 227, p. 730; '13 c. 188, p. 622; '15, c. 126, p. 272.

SEC. 51. *Legislative apportionment.* The apportionment

of the houses of the legislature is as provided in this chapter.

Hist. C. L. 4:6.

Cross ref. Constitutional provision relating to apportionment; Const. III, 2, as am.

Construction of prior acts: Laws '91, p. 195, which, in providing for the apportionment of the legislature, accorded representation to two counties created by an act subsequently declared to be unconstitutional, and omitted to provide representation for the counties from which the two created counties were organized, is unconstitutional. *Ballantine v. Willey* (1893) 3 I. 496, 31 P. 994, 95 A. S. R. 17.

An apportionment act which contemplates that each county shall have one senator and representatives in proportion to population, is valid and constitutional, although an act purporting to create certain counties for the representation of which the apportionment act provides, is afterward held unconstitutional. In such case the apportionment act will be enforced according to its terms, except that one senator will be accorded to the county from which the attempted new counties were created, and representatives will be allowed to such county in proportion to its population. *Heitman v. Gooding* (1906) 12 I. 581, 86 P. 785.

County division: Laws '93, p. 170, creating Bannock county, does not deprive said county of representation in the legislature, since said act neither grants nor refuses representation to said county, which remains a part of Bingham county representative district and a part of the senatorial district composed of Bingham, Logan and Alturas counties, and its electors are entitled to vote for the same number of representatives as they were prior to the creation of Bannock county. *Sabin v. Curtis* (1893) 3 I. 662, 32 P. 1130; *Allen v. Curtis* (1893) 3 I. 671, 32 P. 1133.

Equal Representation: The legislature is prohibited by the constitution from passing an apportionment act which does not give substantially just and equal representation to the people of each county, based upon either the voting or entire population, or upon some other fair basis. *Ballentine v. Willey* (1893) 3 I. 496, 31 P. 994, 95 A. S. R. 17.

SEC. 52. Senatorial districts. Each county in the state now existing or hereafter created shall constitute a senatorial district and shall elect one senator.

Hist. C. L. 4:2.

Cross ref. Conforms to Const. III, 2 as am.

County division: Laws '93, p. 170, creating Bannock county, does not segregate the eleventh senatorial district, nor take away any of the rights of the electors of Bannock county in the election of senators in that district. *Sabin v. Curtis* (1893) 3 I. 662, 32 P. 1130.

SEC. 53. Representative districts. The several counties shall elect members of the house of representatives as follows: Each county shall elect one representative for each 2500 votes and remaining fraction thereof amounting to 1000 votes or more cast in said county at the last general election, based on the total vote cast for all candidates for

governor: *Provided*, That there shall be at least one representative from each county.

Hist. C. L. 4:3.

Cross ref. Representatives does not exceed three times the number of senators. Const. III, 2, as am.

Representative district, when more than one county shall constitute the same, shall be composed of contiguous counties, and no county shall be divided in creating such districts. Const. III, 5.

SEC. 54. *Duty of secretary of state.* The secretary of state must certify to the county auditor of each county on or before the first day of April preceding a general election the number of representatives in the legislature said county will be entitled to elect at the following election. When any new county has been created, subsequent to the last general election for governor, the total vote cast for governor in the territory included in such new county and in the territory remaining in any county or counties from which said new county has been created shall be estimated by the secretary of state as nearly as possible from the election returns and the legislative apportionment figured thereon.

Hist. C. L. 4:4.

APPENDIX C.

COMPILED STATUTES, CH. 160.

ARTICLE 2.

ELECTIVE CITY OFFICERS.

SEC. 3862. *Election and qualification of councilmen.* Each ward of said city shall have at least two councilmen who shall be chosen by the electors of the entire city from the qualified electors of their respective wards and who shall serve for two years and until their successors shall be elected and qualified. No person shall be eligible to the office of councilman who is not at the time of his election an actual resident of the ward for which he is elected and a qualified elector under the Constitution and laws of the State of Idaho, and if any councilman shall remove from the ward for which he is elected his office as a councilman shall thereby become vacant. Whenever there shall be a tie in the election of councilmen it shall be determined by lot by the judges of election of the ward in which it shall happen.

Hist. C. L. 2184. Laws 1917, Ch. 49, Sec. 1, p. 110.

SEC. 3864. *Officers Elective and Appointive.* At the time of the biennial election hereinafter provided for there shall be elected a mayor, a city clerk and the councilmen hereinbefore provided for. The mayor, with the consent of the council, shall appoint a city treasurer, a city attorney, a city engineer, a police judge, a chief of police and an overseer of streets, and the mayor may appoint a city bandmaster, who shall hold their offices for two years unless sooner removed by the mayor with the consent of the council. The mayor, by and with the consent of the council, shall appoint such a number of regular policemen as may be necessary and may also appoint special policemen from time to time as exigencies arise. Such police officers appointed by the mayor and the council in accordance herewith shall be removable at any time by the mayor: *Provided*, The council may provide by ordinance that the city clerk shall be ex-officio police judge.

Hist. C. L. 2186. Laws 1917, Ch. 49, Sec. 2, p. 110.

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